

AWARD NO. 22

Case No. 22

Organization File No.

Carrier File No. 12 (05-1023)

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
)
TO)
)
DISPUTE) CSX TRANSPORTATION COMPANY

STATEMENT OF CLAIM:

(1) The discipline [sixty (60) days's suspension that began on removal from service on August 4 through October 2, 2005 and sixty (60) days' overhead suspension for a three (3) year period and a requirement to contact an EAP counselor for evaluation relative to anger management counseling prior to returning to work on October 3, 2005] imposed upon Mr. R. Crawford in connection with charges of alleged insubordination and conduct unbecoming an employee, but not limited to CSX Operating Rule GR-2 on August 4, 2005, while working with the 6XR2 System Rail Team on the Blue Island Subdivision near Blue Island, Illinois, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement.

(2) As a consequence of the violation referred to in Part (1) above, Mr. R. Crawford shall now receive the remedy prescribed by the parties in Rule 25, Section 4.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On August 4, 2005 Claimant was filling a temporary vacancy as a Fuel Truck Operator with a rail gang in the vicinity of Blue Island, Illinois. While machines were being loaded on a rail car

for transport, Manager K. E. Robertson observed that Claimant was fueling the machines. Robertson called Claimant on the radio and told him to stop fueling the machines and assist in loading them onto the rail car. Claimant replied that he would not drive the truck to the next location if he could not fuel the machines. After Robertson asked Claimant not to speak to him in that manner over the radio, Claimant approached Robertson and complained about his inability to manage his employees and his ineffectual decision making. The conversation became heated and Robertson ultimately removed Claimant from service pending an investigation.

Claimant was subsequently directed to attend a formal investigation at which he was charged with insubordination and conduct unbecoming an employee. At the investigation, Claimant explained that he was concerned about his safety if he had to drive the fuel truck, which he contended was overloaded. He also asserted that he needed to fuel the machines at that time because he would be unable to reach them in the morning.

Following the investigation, Claimant was assessed a sixty day actual suspension and a sixty day deferred suspension. Additionally, he was directed to contact an EAP counselor for an evaluation relative to anger management counseling.

A review of the record of the investigation establishes that Claimant was given an order to stop fueling the track equipment and assist with the loading of the equipment. There is no dispute that he did not comply with this instruction. Not only did he refuse to comply with Robertson's order, the Board finds that Claimant engaged in a verbal altercation with him.

The principle in cases such as this is that employees are required to comply with orders from supervisors and, if they feel the orders were improper, file a grievance. In other words, obey now


– grieve later. There is a recognized exception to this principle if there are safety considerations. But not every safety consideration will permit an employee to disobey an order. Arbitral panels have consistently held that the employee must reasonably believe that obedience would place the employee or others in imminent danger or harm. Claimant's concern that it would be difficult to fuel the machines the following morning does not fit this exception. If Claimant told Robertson that had been his reason for fueling the equipment, it then would have been Robertson's responsibility if the machines could not be fueled.


On the other hand, Claimant's concern about the safety of driving a full fuel truck might be a safety concern. The question, then, is whether that concern was reasonable. In reviewing the record, the Board does not find sufficient evidence to support a conclusion that operating the truck would have presented a safety hazard. As an affirmative defense, the Organization had the burden of proof on this point. In any case, Claimant's subsequent conduct in engaging in an altercation with Robertson was improper. We conclude, therefore, that there was substantial evidence to support the Carrier's charges against Claimant.

The Board further finds that the discipline imposed was appropriate and not excessive in light of the charges against Claimant. In reaching this conclusion, the Board has considered the various arguments of the Organization and finds them to be without merit. There are circumstances that justify the Carrier removing an employee from duty pending an investigation. In the absence of a restriction in the Agreement, the Carrier may take such action in cases of insubordination or altercations. We also take no exception to Assistant Chief Engineer Oram issuing the discipline even though he was not the hearing officer, in the absence of the Agreement creating a restriction upon

whom may issue discipline. Finally, we reject any suggestion that an employee may not be disciplined on the basis of the testimony of a single witness.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Roy C. Robinson
Employee Member


James T. Klimtzak
Carrier Member

Dated: December 30, 2008
Arlington Heights, Illinois