

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 47

STATEMENT OF CLAIM:

Appeal of the thirty-day suspension issued to Claimant M. L. Scott as a result of investigation held on September 4, 2003, in regards to Claimant's insubordination and failure to report for service.

FINDINGS:

The Claimant was employed by the Carrier as a track welder at the time of this claim.

On August 19, 2003, the Carrier issued a notice informing the Claimant to appear for a formal investigation in regards to the charge against him of conduct unbecoming an employee in violation of Carrier Operating Rules 500 and 501.

The Carrier also indicated in the notice that the Claimant was insubordinate and failed to report for service at a derailment site in Queensgate Yard on August 15, 2003, as he had been requested to do by Assistant Roadmaster Ken Robertson.

The Claimant was to be withheld from service pending the outcome of the investigation.

The hearing took place on September 4, 2003. On September 15, 2003, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed a thirty-day suspension, commencing August 18, 2003. The

Claimant was informed that he would be eligible to return to work on September 18, 2003.

The parties being unable to resolve their dispute, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant was guilty of conduct unbecoming an employee and insubordination for failing to report for service at a derailment site on August 15, 2003. Therefore, the claim will have to be sustained.

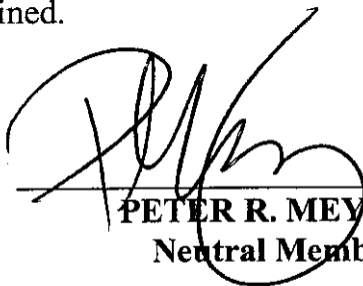
The Carrier's case is based upon instructions that were allegedly given by Assistant Roadmaster Robertson to another employee named Mr. Baumann. Assistant Roadmaster Robertson testified that he told Mr. Baumann that he had to report to the derailment site and that he should also tell Claimant Scott to report at the same location. Assistant Roadmaster Robertson stated that he did not believe it was necessary to get both men together and have a job briefing and explain to them exactly what they needed to do. Employee Baumann denies that he was ever ordered by Assistant Roadmaster Robertson to go to the derailment site, and he also denies that he was ever told by Robertson to notify the Claimant. The Claimant stated that he did not receive any instructions either from Mr. Baumann or from Assistant Roadmaster Robertson. Consequently, the Carrier has failed to prove with sufficient evidence that the Claimant actually received the instructions that formed the basis of the charge against him.

PLB 6239
Awd 47

It is fundamental that the Carrier bears the burden of proof in all disciplinary cases. In this case, the Carrier has failed to prove that the instructions that the Claimant allegedly disobeyed were ever delivered to him either by the Assistant Roadmaster or his fellow employee. Therefore, the claim must be sustained.

AWARD:

The claim is sustained.



PETER R. MEYERS
Neutral Member

Dated: 5/31/04