

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
AND
NORFOLK & WESTERN RAILWAY COMPANY

Case No. 71

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood

1. The dismissal of Trackman Max Ish for alleged insubordination and conduct unbecoming an employee was without just and sufficient cause and on the basis of an unproven and disproven charge and in violation of the Agreement. (Rules 22 (A) and 22 (E))
2. Claimant Ish shall be allowed the remedy prescribed in Rule 22 (E), including seniority, vacation, and all other rights unimpaired and that he be paid for all monies lost beginning March 6, 1989, to date of reinstatement.

FINDINGS:

Claimant Max Ish was employed by the Carrier as a trackman.

On March 8, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

. . . to determine your responsibility in connection with your being insubordinate and conduct unbecoming an employee when you directed obscene and disrespectful language to Assistant Roadmaster S. B. Soest on March 6, 1989.

A hearing was held on March 17, 1989; and on March 28, 1989, the Carrier notified the Claimant that he had been found guilty of all charges and was dismissed. The Organization thereafter

filed a claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case, and we find that there is no merit to the procedural arguments raised by both sides.

With respect to the substantive question, this Board finds that there is sufficient evidence in the record to support the finding that the Claimant was guilty of insubordination and conduct unbecoming an employee on March 6, 1989. The record is clear that the Claimant used profane language directed at a supervisor and, at the same time, refused to perform work that was being assigned by that supervisor. The Claimant subsequently apologized for his behavior, thereby admitting that he had used that profane language and directed it at his supervisor.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

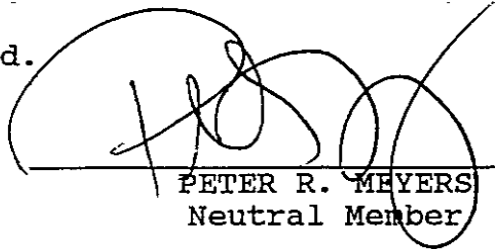
In the case at hand, the Claimant has been disciplined on numerous occasions and had previously been suspended for fifteen days and forty-four days for similar offenses. Given the nature of the wrongdoing in this case, and the previous discipline record of the Claimant, this Board cannot find that the action taken by the Carrier in terminating his employment was unreasonable, arbitrary, or capricious. Therefore, the claim

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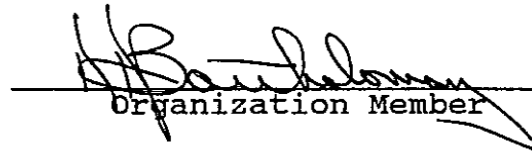
must be denied.

AWARD:

Claim denied.


PETER R. MEYERS
Neutral Member


Carrier Member


Organization Member

Dated: April 29, 1991