

BEFORE PUBLIC LAW BOARD NO. 5896

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 179

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant M.L. Munn for violation of Carrier's On-Track Worker Safety Rule 600 and Carrier's Safeway Rule E-6(a), as a result of investigation conducted on August 16, 2001.

FINDINGS:

Claimant M.L. Munn was employed by the Carrier as a Track Foreman during the time period relevant to this matter.

On August 3, 2001, the Claimant was notified to appear for a formal investigation and hearing into charges that on July 30, 2001, a backhoe and track force that the Claimant was in charge of occupied the Number Two Main Track on the Boyles Terminal Subdivision between the SAS and NAS Mary Lee without authority or any type of protection. The investigation took place on August 16, 2001. As a result, the Claimant was found guilty of violating Carrier's Track Worker Safety Rule 600, as well as Carrier's Safeway Rule E-6(a), and he was dismissed from the Carrier's service.

The Organization filed a claim on the Claimant's behalf, contending that dismissal was a disproportionately harsh and excessive penalty, and that the Carrier was arbitrary and capricious in refusing to apply other agreed-upon methods for handling situations such as the one at issue. The Carrier denied the claim.

The Carrier contends that there is no dispute that the Claimant was guilty of the charges.

Instead, the issue is whether dismissal was appropriate in the case of an employee with twenty-one years of service. The Carrier acknowledges that under normal circumstances, it would agree with the Organization's contention that other methods of handling such a matter would be more appropriate. The Carrier maintains, however, that two factors present in the instant case make this situation abnormal, thereby making dismissal appropriate.

The Carrier argues that the first of these factors is that the Claimant violated rules that have been designated "Life Critical." In 2001, the Carrier adopted the policy that a proven violation of these rules is so egregious as to justify dismissal. The Carrier emphasizes that the Claimant allowed employees under his direction to occupy the track in a highly congested area, one with considerable train traffic. The Carrier maintains that a train entering the area unaware of the presence of these employees could have caused several injuries, or even fatalities.

The Carrier then points to the second factor, that this was the Claimant's second violation within two weeks, under very similar circumstances, of the On-Track Safety Rule. On July 18, 2001, the Claimant permitted on-track equipment to proceed through crossover switches within his working limits, doing so without first securing authority from the dispatcher.⁴¹ The Carrier emphasizes that this earlier incident was handled in a non-disciplinary manner, but the occurrence at issue, taking place just twelve days later, required disciplinary handling.

The Carrier further argues that it published its "Life Critical" policy statement, advising employees that a proven violation of these rules will result in dismissal. It therefore should be no surprise that the Claimant was dismissed from service after being found guilty as charged.

Addressing the Organization's assertion that the Claimant is an experienced employee with twenty-one years of service, but was not allowed to attend foreman or track inspector

training classes that were made available to new hires, the Carrier contends that the Claimant was experienced enough to recognize and understand the rules. Moreover, if the Claimant did not understand a particular rule, he always had the opportunity to ask his supervisor. The Carrier asserts that because the Claimant has been a foreman for several years, he cannot use lack of training as an excuse for such an egregious violation of Life Critical rules.

The Carrier therefore contends that the claim at issue should be denied in its entirety.

The Organization asserts that although the transcript reveals that the Claimant did admit some responsibility for the incident at issue, the Carrier's disciplinary response was disproportionately harsh and excessive. The Organization emphasizes that the Claimant is an experienced employee with almost twenty-one years of service.

The Organization further argues that the transcript demonstrates that the area in which the Claimant was working was highly congested, and it could be difficult to explain the exact work limits to a dispatcher. The Organization points out that several people involved in the hearing had difficulty in understanding the work limits and how the violation occurred. The Organization contends that the Claimant has not been allowed to attend the Carrier's Foreman or Track Inspector training classes, which have been offered to new and recently hired employees. The Organization therefore asserts that appropriate training has not been made available to the Claimant.

The Organization goes on to maintain that while the Carrier chose to conduct a hearing and dismiss the Claimant, other agreed-upon methods for handling such situations were available and would have been more appropriate. The Organization points out that other employees facing similar charges, both before and since the Claimant's hearing, have been offered "IRC" or "time

out" sessions, as prescribed by the Carrier's Individual Development and Personal Accountability Policy. The Organization emphasizes that it and the Carrier have agreed that this Policy would be used for the type of incident at issue here. The Organization asserts that the Carrier's actions in this matter have been arbitrary and capricious.

The Organization ultimately contends that the claim should be allowed, the Claimant should be reinstated and compensated for all time lost, and the Claimant's record should be cleared of all charges.

The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant violated several safety rules when he allowed a train to occupy a track without track authority or any type of protection. It is fundamental that a person in the Claimant's position must follow the rules so that a dangerous situation such as the one here does not occur. The Claimant failed to follow the rules as they are written and, as a result, the Claimant subjected himself to discipline. It is also clear that this was the second time he violated that type of a rule within a very short period of time.

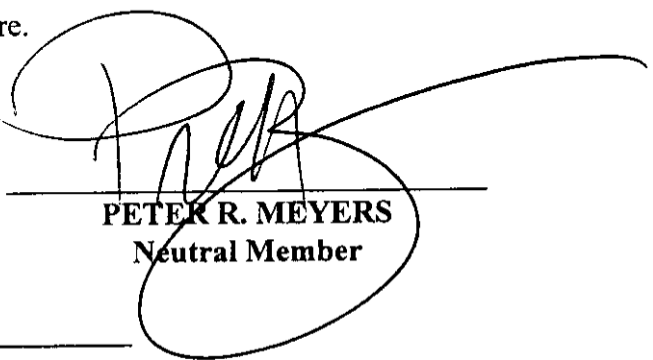
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

There is no question that the Claimant in this case violated a very important rule, the results of which could have been devastating. Consequently, we hold that the Carrier had the right to issue severe discipline to this Claimant. However, given the Claimant's twenty

years of service, this Board finds that the punishment of dismissal was unreasonable and arbitrary and must be reversed. Consequently, we order that the Claimant be reinstated to service, but without back pay. The period that the Claimant was off should be considered a lengthy disciplinary suspension. Moreover, given the seriousness of this wrongdoing, this Claimant should not be reinstated to a foreman position and we hold that the Claimant should not hold a foreman position in the future.

AWARD:

The claim is sustained in part and denied in part. The Claimant is to be reinstated to service but without back pay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension for the wrongdoing. In addition, the Claimant shall not be allowed to work as a foreman in the future.



PETER R. MEYERS
Neutral Member

Dated: _____

8/15/02