

BEFORE PUBLIC LAW BOARD NO. 5896

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 186

STATEMENT OF CLAIM:

Appeal of a ten-day actual suspension issued to Claimant G. J. Zinn in connection with his failure to ensure that lock-out/tag-out devices were in place before maintaining or repairing tie inserter TRI-9623, and with being incompetent and willfully neglecting his duties.

FINDINGS:

Claimant G. J. Zinn was employed by the Carrier as a Track Foreman during the relevant time period.

By letter dated March 21, 2002, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with an incident that occurred at approximately 1015 hours on March 4, 2002, when the Claimant's right hand was struck by an engine cooling fan on tie inserter TRI-9623. The Carrier charged the Claimant with failing to ensure that lock-out/tag-out devices were in place before maintaining or repairing tie inserter TRI-9623, and with being incompetent and willfully neglecting his duties. The Carrier further alleged that the Claimant violated the Carrier's Safe Way Safety Policy Statement, the Carrier's Safe Way General Safety Rules Rights and Responsibilities, the Carrier's Safe Way Engineering and Mechanical Departmental Safety Rule E/M 13 Mechanized Equipment, and the Carrier's

Transportation Operating Rule General Regulation 501.

The hearing took place on April 1, 2002. On April 11, 2002, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of a ten-day suspension from service effective April 29, 2002. The Carrier informed the Claimant that he was to return to service on May 9, 2002.

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 insufficient evidence that the Claimant acted incompetently and willfully neglected his duties on March 4, 2002. There is sufficient evidence that the Claimant failed to see that the lock-out/tag-out devices were in place before maintaining or repairing the tie inserter. However, there is absolutely no evidence that the Claimant willfully neglected his duties or acted in some incompetent fashion.

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.

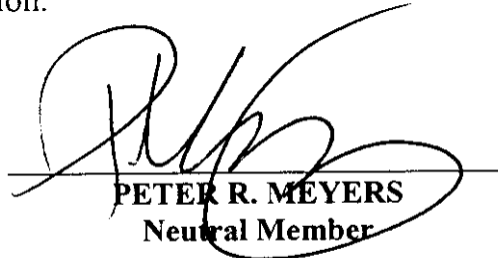
In this case, the guilty finding only relates to the failure of the Claimant to follow one of the two safety rules that he was charged with violating. There is evidence that he did violate Rule E/M 13(i), which required that the lock-out/tag-out devices are in place before maintaining or repairing equipment. However, as stated above, the more serious charge of willfully neglecting his duty that is set forth in Regulation 501(5) was simply

not proven.

Therefore, this Board cannot sustain the ten-day suspension of this Claimant because the serious charge was simply not proven. This Board hereby reduces the Claimant's discipline to a written warning for his failure to follow the Mechanized Equipment Rule and the suspension shall be removed from the Claimant's record and he shall be made whole for all lost wages. This is a Claimant with more than twenty years of seniority who has an unblemished service record. His infraction does not amount to the type of infraction for which he should be suspended and lose pay.

AWARD:

The claim is sustained in part and denied in part. The Claimant's suspension is hereby reduced to a written warning and he shall be made whole for all lost wages resulting from the suspension.


PETER R. MEYERS
Neutral Member

Dated: 6/22/03