

BEFORE PUBLIC LAW BOARD NO. 5896

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CSX TRANSPORTATION**

Case No. 200

STATEMENT OF CLAIM:

Appeal of the dismissal of J.B. Ussery.

FINDINGS:

On August 7, 2003, the Carrier conducted a formal investigation and hearing to develop the facts and information regarding charges that the Claimant had violated Carrier's Operating rules when the Claimant reported an on-duty back injury that occurred on February 3, 2002, after previously stating that he had injured his back while off duty at home. As a result of this investigation, the Carrier found the Claimant guilty as charged and dismissed the Claimant from the Carrier's service. The Organization filed a claim on the Claimant's behalf, challenging his dismissal. The Carrier denied the claim.

The Carrier contends that the evidence developed at the hearing supports a finding that the Claimant is guilty as charged. The Carrier asserts that based upon the severe consequences of the Claimant's falsification of his statements concerning the incident at issue, and his failure to accurately and timely report this incident to his supervisor, dismissal from the Carrier's service was the appropriate disciplinary response. The Carrier contends that the instant claim should be denied in its entirety.

The Organization contends that the Claimant is a long-term employee with a clean record dating back to 1978. The Organization asserts that discharge was too harsh a

penalty under the circumstances. The Organization maintains that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came 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 was guilty of failing to promptly report an injury which had occurred on February 3, 2002. The record reveals that the Claimant had previously stated to the roadmaster that he had injured his back off duty while he was at home. He later took the position that the injury had occurred while he was dismounting the rear of a Carrier truck carrying a track jack. The Claimant admitted that he had told the roadmaster that he had injured his back at home. He also admitted that that did not occur. The Claimant finally admitted that his statements were dishonest.

The Carrier's rules prohibit employees from being dishonest and making any false statements. (See CSXT Rule 501.) Given the testimony of the Claimant, it is clear from this record that the Claimant admittedly violated the Carrier's rules.

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.

The Claimant in this case admittedly was dishonest in reporting an injury on the job. This Board has upheld discharges of Claimants for similar wrongdoing, even

employees with long-term service as is held by the Claimant in this case. (See Award No. 189 of Public Law Board No. 5896.) Given the seriousness of the wrongdoing of the Claimant in this case, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

DATED: 12/20/04