

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 9

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant J. F. Leithold as a result of investigation held September 12, 2000, in connection with Claimant's alleged failure to perform his duties safely and properly, responsibility for a collision, as well as violation of Rule 707.

FINDINGS:

Claimant J. F. Leithold was employed by the Carrier as a foreman at the time of this claim.

On September 1, 2000, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with the Rule 707 Conditional Stop Order in effect on August 30, 2000, on the New Castle Subdivision at Kent, Ohio, with the Claimant designated as the employee-in-charge, and an incident involving Train Q64028 colliding with the Utilco on-track brush cutter that was under the Claimant's protection and control. The Carrier charged the Claimant with failure to perform his duties safely and properly, causing the collision, as well as violating Rule 708, more specifically, failure to know that all trains authorized to pass through his limits had passed before again fouling the track.

The hearing took place on September 12, 2000. On September 29, 2000, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of dismissal from all services as this was the Claimant's third Rule 707 violation incident within a ten-month period.

The Organization filed a claim challenging the Claimant's dismissal.

The parties being unable to resolve the issues, 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 failed to perform his duties safely and properly and was responsible for the collision that took place on August 30, 2000. Indeed, the Claimant admits his responsibility for the accident on page 12 of the transcript. Rule 707 states:

The employee-in-charge will be responsible for all train and on-track equipment movements within the limits. The employee-in-charge must know that all trains authorized to pass through his limits have passed before again following the track.

The Claimant was the employee-in-charge and, therefore, we find that he was clearly responsible for the accident and the resulting damage.

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.

The Claimant in this case began his service with the Carrier in April of 1976. Consequently, at the time of his termination, he had been employed by the Carrier for nearly twenty-four and one-half years. There is evidence in the record to support the Claimant's position that he was working many double shifts and he was suffering from acute stress disorder. The record reveals that the Claimant had worked in excess of eighty-one hours in the week just prior to the accident.

Taking into consideration the lengthy seniority of the Claimant, as well as his serious psychological problems, this Board must find that the Carrier acted without just cause when it terminated the Claimant's employment. Consequently, we order that the Claimant be returned to service, but without back pay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension. In addition, this Board orders that the Claimant be disqualified from his position as a foreman, and he shall only be allowed to return to service at a job which would have less stress and less responsibility.

AWARD

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service but without back pay. He shall also be disqualified from his position as a foreman and should be placed in a position with less responsibility and stress.



PETER R. MEYERS
Neutral Member