

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 25

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant M. D. Riddle as a result of investigation held on March 19, 2002, in regards to Claimant's alleged conduct unbecoming an employee in connection with a conviction on charges of assault and disorderly conduct.

FINDINGS:

The Claimant was employed by the Carrier as a track worker at the time of this claim.

On March 8, 2002, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and the Claimant's responsibility in connection with the charges of conduct unbecoming an employee and violation of Carrier Operating Rules 501 and 501-A in regards to his conviction on charges of assault and disorderly conduct on March 5, 2002.

The hearing took place on March 19, 2002. On April 2, 2002, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of dismissal effective that date.

The parties being unable to resolve their dispute, this matter comes before this Board.

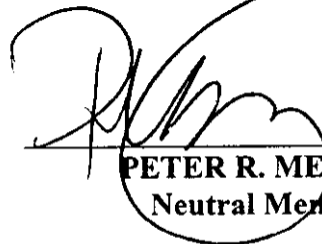
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating CSX Operating Rules 501 and 501-A. The Claimant was convicted on charges of assault and disorderly conduct on March 5, 2002, and that was a sufficient basis for the Carrier to find that the Claimant had engaged in conduct unbecoming an employee.

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 engaged in wrongdoing here. However, given the personnel record of the Claimant, which contains no previous discipline, this Board finds that the Carrier acted unreasonably and arbitrarily when it terminated the Claimant's employment. Therefore, this Board orders that the Claimant should be reinstated to service, but without back pay. This Board also orders that the Claimant must pass a return-to-work physical which would include both a drug and alcohol screening and a mental health evaluation prior to being placed back on the job. The time that the Claimant was off shall be considered a lengthy disciplinary suspension, and the Claimant will receive no back pay.

AWARD:

The claim is sustained in part and denied in part. The Claimant is reinstated to service, but without back pay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension. In addition, prior to being returned to work, the Claimant must pass a return-to-work physical examination which includes a drug and alcohol screening, as well as a mental health evaluation.



PETER R. MEYERS
Neutral Member

Dated: _____

8/17/02