

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 28

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant S. J. Mosley as a result of investigation held on September 25, 2002, in regards to Claimant's alleged theft, dishonesty, disloyalty, willful neglect of duty, and failure to properly protect the interests of the Carrier and its customer's lading on June 8, 2002.

FINDINGS:

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

On June 26, 2002, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and the Claimant's responsibility, if any, in connection with his having taken boxes of stereo equipment (customer lading) which had been removed from an open trailer on a flat car on June 8, 2002, near 51st Street on the Blue Island Subdivision MP DC 25.7, Chicago, Illinois. The Carrier charged the Claimant with theft, dishonesty, disloyalty, willful neglect of duty, and failure to properly protect the interests of the Carrier and its customer's lading.

After several postponements, the hearing took place on September 25, 2002. On October 15, 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 the Carrier has failed to meet its burden of proof that the Claimant was guilty of engaging in theft,

dishonesty, disloyalty, willful neglect of duty, and failure to properly protect the interests of the Carrier and its customer's lading. Therefore, the claim must be sustained.

It is very apparent that there was some type of conspiracy to steal goods by the Loram maintenance employees. Some of those employees apparently implicated the Claimant. However, there is simply insufficient evidence to support the finding that the Claimant was guilty of theft himself, nor is there sufficient evidence to prove that the Claimant willfully neglected his duty or failed to protect the Carrier's property or customer's lading.

It is fundamental that the Carrier must provide sufficient evidence to support a guilty finding in order for it to be upheld. In this case, there are some implications and some questionable testimony, but there is not enough to support the very serious charges against the Claimant. The Claimant in this case has been working without incident for the Carrier since September of 1997. There is just not enough in this transcript and record to justify his termination. Therefore, the claim must be sustained.

AWARD:

The claim is sustained.


PETER R. MEYERS
Neutral Member

Dated: 1/31/02