

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 33

STATEMENT OF CLAIM:

Appeal of the dismissal issued to Claimant M. W. Kelley as a result of investigation held on January 30, 2003, in regards to Claimant's alleged insubordination, failure to comply with the instructions of his supervisor, desertion of duty, failure to protect his assignment, as well as absenting himself without permission.

FINDINGS:

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

On December 9, 2002, the Carrier notified the Claimant to appear for a formal investigation in regards to a) the Claimant's November 25, 2002, attendance at a 3rd Quarter Safety Certification class in order to avoid work even after having been reminded that he had already attended that class; and b) the Claimant's November 26, 2002, driving of his personal vehicle to a job site rather than riding with his gang as instructed and then leaving the job without permission later that day. The Carrier charged the Claimant with insubordination, failure to comply with the instructions of his supervisor, desertion of duty, failure to protect his assignment, as well as absenting himself without permission. The Claimant was withheld from service pending the outcome of the investigation.

After one postponement, the hearing took place on January 30, 2003. On February 19, 2003, the Carrier notified the Claimant that as a result of his disciplinary record and lack of truthfulness and credibility in this case, 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 insubordination, failure to comply with the instructions of his supervisors, leaving the job without permission, and failing to protect his assignment. The Claimant's excuse that he was not directly told "no" and that he was planning on going to his orthodontist and needed his car are simply insufficient explanations of his wrongdoing. Later investigation shows that some of the statements made by the Claimant were not entirely truthful.

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 record reveals that this very short-term employee had previously received a thirty-day suspension for failing to protect his assignment. Given the seriousness of the offenses of which the Claimant was found guilty in this case and his short tenure and previous disciplinary record, this Board cannot find that the Carrier's action in terminating his employment was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: _____

5/27/03