

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 35

STATEMENT OF CLAIM:

Appeal of the dismissal issued to Claimant T. Norman as a result of investigation held on January 23, 2003, in regards to Claimant's conduct unbecoming a Carrier employee and violation of Carrier Operating Rules 500(1) and 501(4).

FINDINGS:

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

On January 10, 2003, the Carrier notified the Claimant to appear for a formal investigation in connection with his being absent without permission from his assignment as a track foreman on force 6A09, commencing December 6, 2002, and continuing, as well as his failure to comply with the verbal instructions given to him by Roadmaster T. L. Pollock on December 6, 2002. The Carrier charged the Claimant with conduct unbecoming a Carrier employee as a result of his insubordination and violation of Carrier Operating Rules 500(1) and 501(4). The Claimant was withheld from service pending the results of the investigation.

The hearing took place on January 23, 2003. On February 6, 2003, 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 procedural argument raised by the Organization, and we find it to be without merit. Although one of the elements of the Notice of Investigation dealt with the Claimant's alleged insubordination on December 6, 2002, the other offenses dealt with the Claimant's being absent without permission from his assignment starting December 6, 2002, and continuing until the issuance of the Notice of Investigation on January 10, 2003. Consequently, since there was a continuing violation, this Board finds that the Carrier's issuance of the Notice of Investigation on January 10, 2003, and then holding the hearing on January 23, 2003, did not violate the Claimant's due process rights under the agreement. Moreover, the Carrier did not act in violation by bringing up evidence of the Claimant's alleged wrongdoing on December 6, 2002, since that was the last day that he had actually worked.

With respect to the substantive issue, this Board finds that there is sufficient evidence in the record to support the finding that the Claimant was guilty of being absent from his assignment without permission from December 6, 2002, and continuing to at least January 10, 2003. Moreover, there is sufficient evidence that the Claimant was guilty of insubordination in failing to follow the verbal instructions of his roadmaster on December 6, 2002. Essentially, the Claimant admits failing to follow the orders of the roadmaster and also admits that he had

been absent without permission.

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.

Given the seriousness of the offenses of which the Claimant was proven guilty and the fact that the Claimant had only accumulated approximately four years of seniority, this Board cannot find that the action taken by the Carrier in removing him from employment was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.


PETER R. MEYERS
Neutral Member

Dated: 12/23/03