

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 48

STATEMENT OF CLAIM:

Appeal of the dismissal issued to Claimant J. A. Cave as a result of investigation held on September 15, 2003, in regards to Claimant's failure to protect his assignment.

FINDINGS:

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

On August 29, 2003, the Carrier issued a notice informing the Claimant to appear for a formal investigation in connection with his unauthorized absence from his foreman's position on Force 6T06 on August 25, 2003. The Carrier charged the Claimant with failure to protect his position in addition to a violation of Carrier Operating Rules 500(1) and 501. The Claimant was informed that he was being withheld from service pending the outcome of the investigation.

The hearing took place on September 15, 2003. On October 2, 2003, the Carrier notified the Claimant that he had been found guilty of all charges and was being dismissed from the service of the Carrier.

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 abandoned his job without permission on August 25, 2003. The record reveals that the Claimant and other employees met with the roadmaster, who informed them that they were "cut off" and may no longer be holding a job. According to several of the employees, the roadmaster wanted to know what they were going to do. Although there was some conflicting testimony, there is substantial evidence in the record that the Claimant informed the roadmaster and other supervisors that he was not feeling well and that he was going to a doctor. The Claimant then left.

The Carrier has charged the Claimant with abandoning his job without permission in violation of Operating Rules 500(1) and 501. Given the record before this Board, there is simply insufficient evidence of the Claimant's violation of those rules.

It should be noted that since the Claimant received a cut-off notice on the date that this occurred, there is no evidence in the record that the Claimant would have been working any other job since the date he was dismissed from the Carrier. Therefore, there will be no award of back pay.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to the Carrier's service but without back pay in accordance with the

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above award.



PETER R. MEYERS
Neutral Member

Dated: _____

8/30/04