

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 52

STATEMENT OF CLAIM:

Appeal of the thirty-day actual suspension issued to Claimant L. J. DiChristopher as a result of investigation held on October 21, 2003, in regards to Claimant's failure to perform his duties as a foreman.

FINDINGS:

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

On July 30, 2003, the Carrier issued a letter informing the Claimant to appear for a formal investigation to determine the facts in connection with his failure to perform his duties as a foreman on July 12, 2003, which the Carrier became aware of on July 21, 2003. The Carrier informed the Claimant that he failed to properly repair gauge while installing ties on the East Bound Runner between 30 switch and 19 crossover at Frontier Yard in Buffalo, New York, as instructed by Roadmaster R. F. McCartney. The Carrier further informed the Claimant that he was being charged with violations of NORAC Operating Rules, General Rules B, CSX Engineering MWI Manual Subpart 53 and 53.1, and Federal Railroad Administration Track Safety Standards Part 213.53. The Claimant was removed from service pending the outcome of the investigation.

After several postponements, the hearing took place on October 21, 2003. On October 31, 2003, the Carrier notified the Claimant that he had been found guilty of the charges brought forth against him and was being assessed discipline of thirty days' actual suspension.

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 failing to properly repair gauge while installing ties on the East Bound Runner between 30 switch and 19 crossover at Frontier Yard in Buffalo, New York. The record reveals that the Claimant was a foreman in charge with a couple of other men working with him with a backhoe installing some safety ties. The normal track gauge is 56 1/2 inches and the evidence reveals that the Claimant spiked the safety ties in question at 57 7/8 inches to 58 inches. One location had a 58 1/8-inch gauge. That action on the part of the Claimant violated various sections of the CSX Engineering Department Field Manual.

Although the Claimant denies doing any wrongdoing, at the hearing, he seemed to have no memory of what happened on the day in question. The Carrier, on the other hand, presented several witnesses who testified that the Claimant was given the assignment involved and failed to perform it properly.

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.

This Board recognizes that the Claimant has served the Carrier for over thirty-five years. However, the Claimant violated a very serious safety rule and his disciplinary record shows a previous ten-day suspension for a vehicle accident occurring two years before this incident. Given the seriousness of the wrongdoing here and the previous disciplinary background of this Claimant, this Board cannot find that the issuance of a thirty-day actual suspension to this Claimant was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: _____

7/9/04