

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 55

STATEMENT OF CLAIM:

Appeal of the dismissal issued to Claimant F. E. Latimore as a result of investigation held on March 24, 2004, in regards to Claimant's conduct unbecoming a Carrier employee, insubordination, and possible falsification of details regarding a matter under investigation.

FINDINGS:

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

On March 12, 2004, the Carrier issued a letter to the Claimant informing him to appear for a formal investigation to determine the facts and place responsibility in connection with his actions in the Division Office building on the afternoon of March 12, 2004. The Carrier stated in that letter that on March 12, 2004, the Claimant demonstrated conduct unbecoming an employee of the Carrier and refused to answer questions in connection with a matter under investigation, resulting from an injury report submitted by the Claimant on March 12, 2004, for an alleged injury that may have occurred on March 11, 2004, at Tucker, Georgia. The Carrier charged the Claimant with conduct unbecoming an employee, insubordination, and possible falsification of details regarding a matter under

investigation. The Carrier also informed the Claimant that he was in possible violation of Carrier Operating Rules 501 and 502, as well as Carrier Safe Way General Safety Rules – Rights and Responsibilities. The Claimant was withheld from service pending the outcome of the investigation.

The hearing took place on March 24, 2004. On April 8, 2004, the Carrier notified the Claimant that he had been found guilty of all charges and was being issued discipline of dismissal from the service of the Carrier 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 several safety rule violations when he injured himself on or about March 11 or 12, 2004. The record reveals that the Claimant could have taken the safer route of walking around a fence, rather than trying to step over it while he was carrying tools. In addition, the record reflects that the Claimant filed an injury report that reflects the date of the injury as being March 12, 2004, when, in fact, it most likely occurred on March 11, 2004. Filing an injury report with a wrong date is also a rule violation.

However, with respect to the more serious charges, conduct unbecoming a Carrier employee and insubordination, this Board finds that there is insufficient evidence in the record to support the guilty finding on those serious charges. The record reveals that the Claimant was brought in to the Supervisor's office to

discuss what had occurred with respect to the injury. The Claimant requested representation because he reasonably believed it to be an investigatory meeting. In fact, it was an investigatory meeting because the Carrier had evidence at the time that the injury had occurred a day earlier than was reported, as well as the Carrier believed at the time that the Claimant had not operated properly when crossing the fence, which eventually led to the Claimant's injury. The Claimant continued to request representation and that request was refused. It is apparent from the record that the Claimant and the Supervisor had words with each other; but whether or not those actions on the part of the Claimant rise to the level of conduct unbecoming an employee and insubordination that would justify discharge is doubtful. Consequently, this Board finds that there was no just cause to find the Claimant guilty of the more serious charges of conduct unbecoming an employee and insubordination.

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 Claimant in this case is a twenty-eight year employee of the Carrier. The only notations on his discipline record relate to injuries which occurred in 1982, 1984, 1985, 1986, and 1988. There is nothing else in this Claimant's record of a disciplinary or other nature that would in any way contribute to a

determination that the Claimant should be discharged for the safety violations.

Given that lengthy seniority, and given the fact that there is not sufficient evidence in this record to support the serious charges of conduct unbecoming an employee and insubordination, this Board must find that the Carrier acted without just cause when it dismissed the Claimant. Consequently, the Claimant will be reinstated, with full back pay minus thirty days and any interim earnings. The thirty days without pay shall be considered a thirty-day suspension for the proven safety violations and the failure of the Claimant to accurately indicate the correct date of the injury.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service with full back pay minus thirty days and any interim earnings. The dismissal shall be reduced to a thirty-day suspension for the more minor offenses of which the Claimant was properly found guilty. There was insufficient evidence and no just cause to find the Claimant guilty of conduct unbecoming an employee and insubordination.



PETER R. MEYERS
Neutral Member

Dated: 10/22/09