

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 58

STATEMENT OF CLAIM:

Appeal of the dismissal issued to Claimant M. L. Munn as a result of investigation held on March 22, 2004, in regards to Claimant's violation of Carrier On-Track Worker Rules 600 and 700.

FINDINGS:

The Claimant was employed by the Carrier as a vehicle operator/laborer at the time of this claim.

On March 11, 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 an incident that occurred on February 25, 2004, in which FRA inspectors observed the Claimant failing to properly protect the track near the Hump Lead in Birmingham, Alabama. The Claimant was charged with violating Carrier On-Track Worker Rules 600 and 700.

The hearing took place on March 22, 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, effective immediately.

The parties being unable to resolve their dispute, this matter comes before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and although we find that Mr. Mohler could have done a much better job in conducting the investigation, this Board cannot find that his poor performance in that regard denied the Claimant a fair hearing. Mr. Mohler's questioning at times was overbearing and several of his actions could be considered "badgering," but I find that the Claimant was still afforded an opportunity to cross-examine the Carrier witness as well as present evidence to rebut the Carrier's case. Consequently, the procedural objections raised by the Organization must be overruled.

With respect to the merits, this Board has reviewed the evidence and testimony in this case and we find that the Carrier has presented sufficient evidence to show that the Claimant acted in violation of Carrier Rules 600 and 700 on February 25, 2004. The record reveals that the Claimant was observed by FRA inspectors and written up by an FRA inspector for the following:

Roadway worker fouling a track without ascertaining that provision is made for on-track safety. The roadway worker was found fouling track, while replacing bolts in frog. He stated he was using watchman lookout, but there was no other person in the immediate area.

The FRA inspector found that:

Roadway workers failed to properly control entry to inaccessible track. Workers performing duties on Hump Lead did not make track inaccessible: 2:45 p.m.

The Claimant admitted that he was knowledgeable in the rules and it was

clear that the track had not been properly protected.

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 received discipline of dismissal for his actions in this matter. The dismissal is based on the fact that the proven violation was "the third life critical violation since 2001." The Claimant had been previously dismissed from service in August of 2001 for a Rule 600 violation. The Claimant had been reinstated to service, but without back pay, based primarily upon his lengthy seniority. Given the fact that the Claimant had previously been terminated for a similar safety violation, and had been returned to service at that time based upon his lengthy seniority, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant again for this new violation. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 2/21/05