

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 67

STATEMENT OF CLAIM:

Appeal of the dismissal issued to Claimant S. A. Pollard as a result of investigation held on April 4, 2007, in regards to Claimant's conduct unbecoming an employee.

FINDINGS:

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

On March 14, 2007, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place his responsibility, if any, in connection with his behavior toward a fellow employee, Mr. P.E. Adkins, between the period October 2006 and February 2007. During that time period, the Claimant allegedly belittled, berated, made obscene gestures and threatening remarks, used profanity, showed sexually explicit pictures, and in other ways harassed Mr. Adkins. The Carrier charged the Claimant with conduct unbecoming an employee of the Carrier; violating Carrier Operating Rules – General Rule A and General Regulations GR-2 and GR-2A; violating the Carrier's Policy Statement on Harassment, the Transportation Policy on Workplace Violence, and the Code of Ethics. The Claimant was withheld from service pending the results

of the formal investigation.

After one postponement, the hearing took place on April 4, 2007. On April 20, 2007, the Carrier notified the Claimant that he had been found guilty of violating Carrier's General Rule A, GR-2, and the Carrier's Code of Ethics. The Carrier informed the Claimant that he was being assessed the discipline of termination of employment with 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 there is sufficient evidence in the record to support the finding that the Claimant was guilty of conduct unbecoming an employee. A review of the Claimant's record indicates that he even admitted that he made a mistake in the way that he dealt with Foreman Adkins in his effort to train him. Also, it is clear from the record that the Claimant did not treat Mr. Adkins with respect when he was supposed to be supervising and training him.

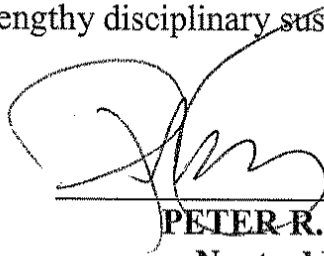
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

It is clear that the Carrier had a sufficient basis to issue discipline to the Claimant for his wrongdoing in this matter. The Carrier also had a right to remove

the Claimant from the roadmaster/manager position because of the manner in which he behaved in dealing with Mr. Adkins. However, this Board finds that the Carrier acted unreasonably and arbitrarily when it terminated the Claimant's employment for his wrongdoing in this case. There was no just cause for the termination. The Board orders that the Claimant shall be reinstated to employment, but without back pay. The time that the Claimant was off shall be considered a lengthy disciplinary suspension. The Claimant should also be advised that he must treat his fellow employees with respect if he wants to continue to be an employee of the Carrier and perhaps be promoted again at a later time.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
Neutral Member

Dated: 7/31/07