

PUBLIC LAW BOARD NO. 6468

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS))	
VS)	NMB CASE NO. 7
)	Award NO. 7
CSX TRANSPORTATION, INC.)	
(Former Louisville & Nashville)	
Railroad Company))	

STATEMENT OF CLAIM:

Claim of C. J. Roberson for reinstatement with seniority and vacation rights unimpaired, pay for all time lost including time lost for attending investigation, and all related entries of discipline removed from his record.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved. The parties to this dispute were given due notice of hearing thereon.

Claimant was summoned to a formal investigation on a charge that:

"*** on April 24, 2001, at approximately 2:00 PM, while working as Engineer on Yard Job Y165-24 at Gentilly Yard, New Orleans, LA, you entered into a verbal altercation with CTI Fuel Truck Driver Armand Adams and CSX Chief Clerk Bob Bates, in which you made threatening remarks and used profane and boisterous language ***."

Following the investigation Carrier found claimant guilty of the charge and dismissed him from service.

This Board has had the opportunity to thoroughly review the transcript of hearing, together with all other documents submitted by the parties. Such review clearly indicates that there was a verbal confrontation between claimant and the Fuel Truck Driver. The record is also clear that claimant used abusive language in his comments to Chief Clerk Bob Bates when Mr. Bates attempted to quiet the argument.

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There is a disagreement in the record over whether or not claimant threatened Mr. Adams, with Mr. Adams testifying such a threat was made in a telephone call from claimant, and claimant denying he made such threat. The credibility of the testimony rests with the officer who was conducting the investigation and it is obvious that the Hearing Officer placed more credence in the testimony of Mr. Adams. This Board is not in a position to overrule this finding of credibility.

Upon a review of this dispute in its entirety, it is evident that Carrier has produced substantial evidence that claimant was involved in this verbal altercation, therefore, Carrier was justified in meting out discipline. The question for this Board is whether or not dismissal from service was justified.

In its submission to this Board Carrier has noted that a single offense, such as that here involved, may not be sufficient to warrant dismissal from service, however, it points to the fact that claimant was first employed in December, 1992, and his record reveals that in September, 1997, claimant received coaching and counseling in connection with Safety Rule 6, in August of 1999, he was cautioned in step two of CSXT Employee Performance Policy, and on December 30, 1999, he was dismissed from service for making false statements and concealing facts. Also, in April 2001 he was given a 5 day suspension for violation of Rule 500, and on May 10, 2001, he was suspended for 10 days for violation of Rule 104-B and 104-C.

It is Carrier's position before this Board that it was well within its rights to take claimant's entire record into consideration when making the decision to dismiss him from service. Claimant's record is far from good and it is obvious that claimant has not learned from his previous mistakes. Under the circumstances the Board will uphold Carrier's decision.

AWARD

Claim denied.

Patricia A. Madden

Patricia A. Madden Carrier Member

Paul T. Sorrow

Paul T. Sorrow, Employee Member

F. T. Lynch

F. T. Lynch, Neutral Chairman

dissent!

Award date August 5, 2002