

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037 NATIONAL MEDIATION BOARD

Case No. 12

Dec 3 3 39 PM '90

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: CSX Transportation, Inc.

NATIONAL RAILROAD
ADJUSTMENT BOARD

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

Dismissal of K. L. Hall, ID# 171839, as a result of investigation held July 20, 1990, at Tampa, Florida."

FINDINGS:

As a result of the inconsistency between the statement of Claimant K. L. Hall taken on January 17, 1989, and the Claimant's testimony as a witness in the trial of W. J. Reddick, Claimant was directed, by certified letter from the Company to attend a formal investigation charging him with the following:

You are being charged with possible violation of those parts of CSX Transportation Operating Rule 501, which reads "Employees must not be...dishonest..., make any false statements or conceal facts concerning matters under investigation".

A formal hearing was held on July 20, 1990, and as a result, Claimant was discharged. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case, including the two statements made by the Claimant with respect to the injury to Mr. Reddick, and we must find that there is sufficient evidence to support the finding that the Claimant was guilty of being dishonest when he made the inconsistent statements with respect to Mr. Reddick's injury. The record reveals that when the Claimant was interviewed with respect to Mr. Reddick's personal injury by Carrier personnel on November 22, 1988, the Claimant stated that he did not notice anything wrong with the wrench that was being used by Mr.

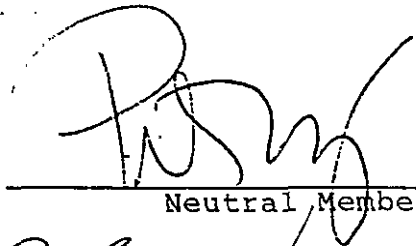
Reddick. He stated that he did not examine it after the injury occurred. He also indicated that he did not see anything wrong with the anchor. However, on June 18, 1990, when the Claimant testified in the case against the Carrier brought by Mr. Reddick in the Superior Court of Georgia the Claimant stated that there was something wrong with the wrench. He also indicated that it was an "improper tool" and that is what caused Mr. Reddick's injury. Obviously, those two statements were inconsistent.

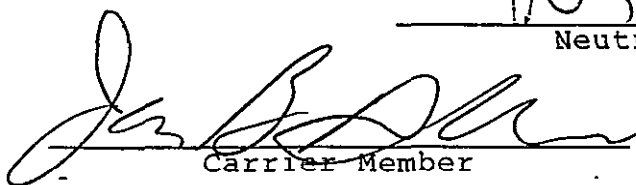
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary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

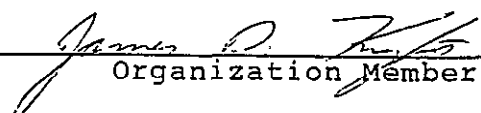
In the case at hand, although the Claimant had nearly 13 years of service with the Carrier, his record includes a number of disciplines and careless work habits. Numerous boards have found that acts of dishonesty are dismissible offenses, even on the first occasion. Given the record of the Grievant, and the seriousness of this act of dishonesty, this Board must find that the Carrier did not act unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim will be denied.

Award:

Claim denied.



Neutral Member

Carrier Member

Organization Member

Date: 11-27-90