

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

Case No. 32

PARTIES: CSX TRANSPORTATION, INC.

TO :

DISPUTE: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Dismissal of R. S. Garren (ID# 177539) as a result of a determination of guilt on the charge of insubordination, vicious, and uncivil conduct, as the result of investigation held on February 24, 1993.

FINDINGS:

Claimant R. S. Garren was employed by the Carrier as a travelling mechanic.

The Claimant in this case was removed from the service of the Carrier on February 13, 1993. On February 19, 1993, the Carrier notified the Claimant to appear for a formal investigation in connection with his insubordinate, vicious, and uncivil conduct stemming from two telephone conversations with a Mr. Wilson Bennett, Assistant General Supervisor of Work Equipment of Waycross, Georgia, on February 11, 1993.

The hearing was held on February 24, 1993. On March 16, 1993, the Carrier notified the Claimant that he had been found guilty of the charges brought forth against him and was being assessed discipline of termination effective that date.

The parties being unable to resolve the issues, this matter came 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 engaging in abusive and violent conduct in two telephone conversations on February 11, 1993. At the hearing, the Claimant admitted that he had made comments similar to those that he was charged with making and explains it by stating that he was "upset," "running a fever," and "wasn't feeling good."

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.

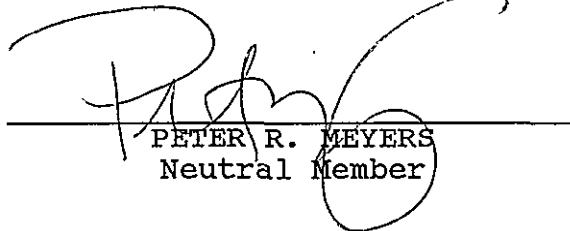
In the case at hand, the Claimant was terminated from service for the wrongdoing involved here. Although this Board finds that the behavior of the Claimant was outrageous and deserving of discipline, we find that the Carrier's action in terminating the Claimant was unreasonable and excessive and there was no just cause for it. The Claimant has served the Carrier since 1981. Although he has received some previous discipline, the wrongdoing involved here was simply not enough to support a termination.

This Board believes that a lengthy suspension terminating upon the receipt of this Award is the appropriate discipline for this Claimant's wrongdoing. Therefore, we hereby order that the Claimant be immediately reinstated, but without back pay. The time that the Claimant was off shall be considered a lengthy

suspension.

AWARD:

Claim sustained in part. The Claimant shall be returned to work upon receipt of this Award, but without back pay. The time that he was off shall be considered a lengthy suspension.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

Dated: _____