

BEFORE SPECIAL BOARD OF ADJUSTMENT 1037

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CSX TRANSPORTATION, INC.

Case No. 39

STATEMENT OF CLAIM:

Claim that Mr. R. S. Garren, ID# 177539, be reinstated to service and made whole for all lost wages and benefits account being dismissed from service as a result of an investigation which was held on October 10, 1994, at Richmond, Virginia.

FINDINGS:

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

On August 8, 1994, the Carrier notified the Claimant to appear for a formal investigation "in connection with the charge of conduct unbecoming an employee in that on July 28, 1994, at approximately 1:45 p.m. at Richmond, Virginia, while engaged in a conversation with Chief Engineer J. P. Epting, you allegedly became boisterous, profane, and threatening in your demeanor." The Claimant was held out of service pending the investigation.

After several postponements, the hearing commenced on October 10, 1994. On October 28, 1994, the Carrier notified the Claimant that he had been found guilty as charged and was being terminated effective that date.

The Claimant filed his appeal, challenging the Carrier's decision. The parties being unable to resolve the issue, 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 violated the Carrier's rules when he became boisterous, profane, and threatening in his demeanor while engaged in a conversation with the chief engineer. A thorough review of the record indicates that the Claimant admittedly used foul language and hostile body language toward the chief engineer, who was attempting to obtain input from the various work groups in the area pursuant to the Carrier's "Let's Talk" program. It should also be noted that the record contains evidence that the Claimant is approximately 6' 4" and weighs 230 pounds, and the chief engineer is approximately 5' 5" and weighs 150 pounds. Those facts make it clear that the chief engineer could have rightfully determined that the actions of the Claimant were threatening and put him in jeopardy.

Although the Claimant has taken the position that his language constituted what might be considered "shop talk," it is apparent that given the circumstances of the visit from the chief engineer, the use of the word "shit" and some of the other language and gestures made by the Claimant were clearly inappropriate and constituted a violation of the Carrier's rules.

It is interesting to note that the Claimant makes reference to the military and the fact that the phrases that he used were derived from the military. Using that as an analogy, it is clear that no officer in the military would accept the type of behavior and language that was directed by the Claimant to the chief engineer. Similarly, in this

employment situation, the Claimant's actions and words were totally unacceptable and were the legitimate basis for serious disciplinary action.

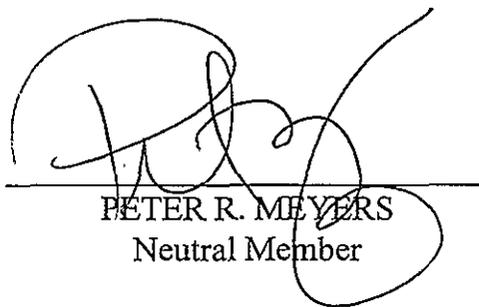
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

Given the serious wrongdoing of this Claimant in this case and the fact that he has previously been terminated for insubordination, including vicious and uncivil conduct unbecoming an employee, this Board cannot find that the action taken by the Carrier in terminating his employment in this case was unreasonable, arbitrary, or capricious.

Therefore, the claim will be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

DATED: _____

DATED: _____