

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

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

Case No. 45

STATEMENT OF CLAIM:

Claim that Mr. R. L. Lewis, ID # 139233, 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 December 8, 1994, at Thomasville, Georgia.

FINDINGS:

Claimant R. L. Lewis was employed by the Carrier as a trackman in Thomasville, Georgia.

On December 2, 1994, the Carrier notified the Claimant to appear for a formal investigation into the charge that he possibly violated Operating Rule 501 when he allegedly falsified information in regards to his back injuries sustained on September 27 and 29, 1994, on Carrier Form PI-1A, which the Claimant signed on November 14, 1994.

The hearing took place on December 8, 1994. On December 28, 1994, the Carrier notified the Claimant that he had been found guilty of violating Operating Rule 501 and was being discharged from the service of the Carrier as of 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 made false statements and concealed facts when he filed reports indicating that several other employees of the Carrier

were witnesses to his on-the-job injury. The Carrier presented all of the alleged witnesses at the hearing, and all of them testified that they did not witness the injuries sustained by the Claimant on September 27 and 29, 1994. However, one of the witnesses did say that the Claimant complained of his back bothering him that day.

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.

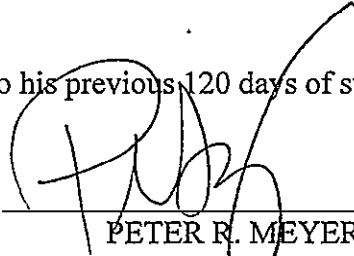
The Claimant in this case first entered the Carrier's service in March of 1967. Until this incident involving the alleged injury in September of 1994, the Claimant had a clean disciplinary record over those 27 years of employment. The Claimant has previously been issued suspensions totalling 120 days keeping him off work through April 30, 1995. The wrongdoing in this case is also serious, but not so serious as to legitimate his dismissal. This Board finds that the Carrier had a legitimate basis to issue another 90-day suspension to the Claimant for the wrongdoing in this case. That 90-day suspension, coupled with the previous 120-day suspension, when coupled with the previous 120-day suspension, will mean that this Claimant will receive 210 days off for this complicated and serious incident involving the violation of numerous Carrier rules. This Board believes that that is sufficient discipline for this serious wrongdoing on the part of the Claimant, which must be mitigated by his 27 years of seniority. After July 31, 1995, the Claimant shall be reinstated to service but without backpay.

AWARD:

Claim sustained in part. The Claimant's dismissal is reduced to a 90-day suspension. He

shall be reinstated to service after the completion of this second 90-day suspension, which

should be made consecutive to his previous 120 days of suspension.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

Dated: _____

Dated: _____