

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
SOO LINE RAILROAD COMPANY  
(CMSP&P)

Case No. 41

STATEMENT OF CLAIM:

Appeal of Claimant James R. Nicholls's termination  
from the Carrier's service.

FINDINGS:

On November 26, 1996, the Claimant received notice from the Carrier instructing him to appear for a formal investigation into the charges of the Claimant's alleged failure to protect his assignment on a full time basis from November 4, 1996, to the current date. After the hearing, it was determined that the Claimant was guilty as charged and on December 13, 1996, the Carrier notified the Claimant that he was being terminated from its service.

The parties being unable to resolve the issues, 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 that the Claimant failed to protect his assignment. It is apparent that he was in jail for at least part of the time and did not even make it to the investigation into this matter.

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.

The Claimant in this case had been issued several letters relating to absenteeism during the entire period of his service with the Carrier. He then failed to protect his assignment from November 4, 1996, until November 26, 1996. He did not appear at the investigation to give a legitimate reason for not protecting his assignment. If he was indeed incarcerated, this Board has held on numerous occasions that incarceration is not a legitimate excuse for failing to protect one's assignment. A carrier must be able to count on an employee to come to work. This employee obviously, despite numerous warnings on absenteeism, is unable to live up to the requirements of a regular employee.

For all of the above reasons, I find that the Carrier had a legitimate basis upon which to terminate this Claimant. The termination was not unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

**AWARD**

Claim denied.

  

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PETER R. MEYERS, Neutral Member

Dated: February 17, 1997