

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CANADIAN PACIFIC RAILWAY COMPANY

Case No. 48

STATEMENT OF CLAIM:

Appeal of Claimant James E. Fredette

FINDINGS:

On December 22, 1997, the Claimant, James E. Fredette, received notice from the Carrier instructing him to appear for a formal investigation into his alleged failure to make himself available for service following his doctor's approval of 10/15/97 and his continued absenteeism and failure to protect his work assignment on a full time basis after he returned to work on 12/2/97.

On February 3, 1998, the Carrier notified the Claimant that he had been found guilty of all charges. Consequently, he was terminated from the Carrier's 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 to support the finding that the Claimant failed to protect his work assignment. The record reveals that the Claimant was medically released to return to work with no restrictions on November 18, 1997. He returned to work on December 2, 1997. He then began to miss work later in December and his last day of

work was December 15 or December 16, 1997. The Claimant did not show up for work after that and he was eventually discharged on February 3, 1998. It is apparent that his record suffered from continued absenteeism and a failure to protect his assignment on a full time basis.

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's record reveals that he received a three-day suspension in March of 1996, and a ten-day suspension in July of 1996. The latter suspension related to his continued absenteeism and failure to protect his assignment. Given that previous disciplinary background and the Claimant's continued failure to protect his assignment, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim will be denied.

AWARD

Claim denied.



PETER R. MEYERS, Neutral Member

Dated: April 13, 1998