

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

Case No. 51

STATEMENT OF CLAIM:

Appeal of Claimant Tyler M. Washington.

FINDINGS:

On August 27, 1998, the Claimant was notified by the Carrier to appear for a formal investigation into the charges of excessive absenteeism by absenting himself from duty without authority and failure to make himself available for service when he allegedly failed to protect his assignment on August 5, 6, 7, 13, 20, 21, and 24, 1998, and being allegedly tardy for his assignment on August 19 and 26, 1998, in violation of General Code of Operating Rule 1.15 and Safety Instruction General Rule 744.

At the request of the Organization, the hearing was conducted on September 9, 1998, and it was determined that the Claimant was guilty as charged. Consequently, the Claimant was dismissed from the service of the Carrier.

The Organization filed the instant claim on behalf of the Claimant under the provisions of the Agreement.

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 was

guilty of failing to protect his assignment on August 5, 6, 7, 13, 20, 21, and 24, 1998, and that he was tardy for his assignment on August 19 and 26, 1998. That type of an attendance record is clearly deserving of discipline.

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's record reveals that he received a five-day deferred suspension in 1994 for absenteeism, a five-day actual suspension in 1994 for tardiness, a sixteen-day actual suspension for absenteeism in 1995, a five-day actual suspension for absenteeism in 1996, and a ten-day actual suspension for absenteeism in 1997. Given that atrocious attendance record and disciplinary background, coupled with the wrongdoing for which he was properly found guilty in this case, 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: October 28, 1998