

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

Case No. 27

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

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CSX TRANSPORTATION  
EMPLOYEE RELATIONS

STATEMENT OF CLAIM:

Thirty-day suspension of D. W. McDaniel (ID #171807) as a result of investigation held May 31, 1991, at Cayce, South Carolina.

FINDINGS:

Claimant D. W. McDaniel was employed by the Carrier as an assistant foreman.

On May 24, 1991, Carrier representative R. G. Smith notified the Claimant to appear for a formal investigation in connection with the following charges:

Monday, May 20, 1991, I instructed you to report to the Division Engineers Office, Tuesday, May 21, 1991, to discuss an injury report which you filed at Augusta, Ga., which conflicts with information you furnished your foreman, Mr. J. O. Myers, concerning an alleged injury you sustained while working at Augusta. You failed to be present as instructed to discuss the injury, and you also failed to call my office to advise that you would not be present; therefore, you are hereby charged with "insubordination". You are also being charged with "making a false or conflicting report of an injury".

The hearing into the charges against the Claimant took place on May 31, 1991. On June 30, 1991, the Carrier notified the Claimant that he had been found guilty of the charge of "insubordination" but that the charge of "making false or conflicting

reports" was being withdrawn as it was not confirmed at the hearing. The Carrier also notified the Claimant that he was being issued discipline of a thirty-day suspension for his insubordination on the day in question, commencing July 1, 1991, and terminating July 30, 1991.

The Organization thereafter filed a claim on behalf of the Claimant, challenging his suspension.

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 insubordination when he failed to be present as instructed to do so by his supervisor in order to discuss the injury that he had suffered. The record also reveals that the Claimant failed to call the supervisor's office to inform him that he would not be present.

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.

In this case, the Claimant was initially charged with making false and conflicting reports and insubordination. There is no evidence of making false and conflicting reports in the record and Division Engineer Tomkins eventually withdrew those charges. However, Division Engineer Tomkins assessed a thirty-day suspension to the Claimant for his insubordination.

Insubordination is often a serious offense when it involves an employee refusing a direct assignment from his employer. The employer has to have the right to direct its workforce, and insubordination on the part of an employee can be a serious impediment to that procedure.

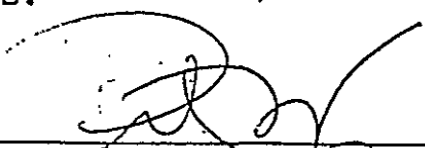
In this case, the Claimant merely failed to show up to meet with the supervisor, after he was instructed to do so, to discuss an injury that the Claimant had received on the job. Although there is no question that that is insubordination, it is not the type of insubordination that justifies a serious disciplinary action such as a thirty-day suspension.

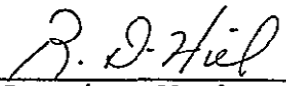
This Claimant has been employed by the Carrier since 1977 and has a relatively good record with only a few disciplinary actions having been taken against him. The most recent disciplinary action was a five-day overhead suspension because the Claimant was responsible for the loss of fifty gallons of diesel fuel. This Board finds that the record cannot justify a thirty-day suspension for the minor type of insubordination of which the Claimant is guilty here. Therefore, we find that the thirty-day suspension be reduced to a five-day suspension and that the Claimant be made whole for all lost time above five days.

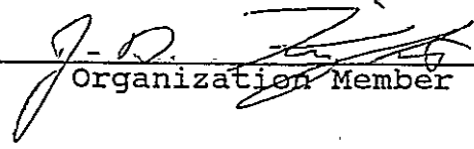
AWARD:

Claim sustained in part. The thirty-day suspension of the Claimant for the insubordination is hereby reduced to a five-day suspension, and the Claimant is to be made whole for the time

lost above five days.

  
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PETER R. MEYERS  
Neutral Member

  
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Carrier Member

  
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Organization Member

Date: March 4, 1992