

BEFORE SPECIAL BOARD OF ADJUSTMENT 1037

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

Case No. 35

STATEMENT OF CLAIM: Claim of the Brotherhood:

Dismissal of C. S. Fountain, ID#-168435, effective on June 10, 1994, as a result of an investigation which was held on May 24, 1994, at the Baldwin Yard Office, Jacksonville, Florida.

FINDINGS:

On May 16, 1994, the Claimant, C. S. Fountain, was working as an Assistant Foreman with the T7 Gang in Baldwin Yard, Jacksonville, Florida, putting on anchors on Track 13. He was observed by Assistant Division Engineer K. Downard standing back about 40 feet behind the men with his arms folded. Mr. Downard approached the Claimant and asked him, "What are you doing here, just standing around with your arms folded?" After a heated exchange between the two men, Mr. Downard ordered the Claimant off the job site.

On May 20, 1994, the Claimant was charged with allegedly violating Rule 501 in that he refused to follow instructions and used abusive language.

A hearing was held on May 24, 1994. The Claimant was found guilty of the charges leveled against him and by letter dated June 10, 1994, he was permanently dismissed from service.

The parties not being able 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 engaged in a verbal altercation involving some boisterous language on the date in question. However, this Board cannot find sufficient evidence in the record to support the finding that the Claimant was insubordinate or refused to follow instructions from his supervisor.

Most of the witnesses had no knowledge of what actually occurred between Mr. Downard and the Claimant. However, there was some substantiation to the fact that the Claimant called his supervisor by an obscene name and verbally abused the supervisor. Consequently, there is sufficient evidence to support a finding that there was a violation of Rule 501 requiring civil and courteous behavior of all employees in their dealings with fellow employees. There is not sufficient evidence of insubordination.

Once this Board has determined that there is sufficient evidence to support a 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.

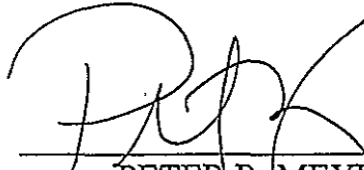
In the case hand, the Claimant is an employee with 20 years seniority although he has only worked for the Carrier for 13 years since he was on assignment by the Organization. A review of his personal record indicates the Claimant began work with the Carrier in May of 1974 and received only one letter of reprimand during the entire period of his employment. The Carrier in this case has terminated the lengthy

employment of the Claimant for what appears to be a minor disagreement and minimal verbal altercation between the Claimant and his supervisor. There is simply no just cause for such drastic action and severe discipline to have been taken by the Carrier. The Carrier's action in terminating the Claimant's employment was unreasonable and arbitrary. A 10-day suspension would have been sufficient to put the Claimant on notice that the type of behavior in which he engaged was not acceptable and should not continue.

Since the dismissal of the Claimant was without just cause, this claim must be sustained in part. The Claimant shall be reinstated with full benefits and backpay minus 10 days reflecting the 10-day suspension.

AWARD

Claim sustained in part. The dismissal of the Claimant is hereby reduced to a 10-day suspension. The Claimant shall be immediately reinstated with all benefits and backpay minus 10 days.



PETER R. MEYERS
Neutral Member

Carrier Member

DATED: _____



Organization Member
DATED: July 19, 1994