

BEFORE SPECIAL BOARD OF ADJUSTMENT 1037

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

Case No. 36

STATEMENT OF CLAIM:

Dismissal of Maintenance of Way Employee K. M. Smith, ID No. 196187, as a result of an investigation which was held on February 22, 1994, in Atlanta, Georgia, account being charged with a possible violation of CSX Transportation Operating Rule 500, and conduct unbecoming an employee.

FINDINGS:

Claimant K. M. Smith was employed by the Carrier as a welder in the state of Georgia.

On February 15, 1994, the Carrier notified the Claimant to appear for a formal investigation into the charges of conduct unbecoming an employee and absenteeism without permission in violation of Rule 500, paragraph 2, due to the Claimant's incarceration resulting from a Carrier vehicle accident on February 14, 1994.

The Claimant was held out of service pending the investigation.

The hearing took place on February 22, 1994. On March 4, 1994, the Carrier notified the Claimant that he had been found guilty of conduct unbecoming an employee as well as violating Rule 500, which resulted in his termination from the service of the Carrier effective that date.

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 conduct unbecoming an employee when he was involved in a traffic accident and later became incarcerated because he was driving without a license. The Claimant admitted that his license had been suspended, but he believed that his attorney had obtained a license for him that enabled him to drive occasionally to and from work.

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.

In the case at hand, the Claimant was terminated for this offense after sixteen years of employment. The Board notes that the charges against the Claimant were "possible absence without permission" and "your involvement, if any, with a Company Vehicle in an accident and conduct unbecoming an employee." Although this Board has found that the Claimant was guilty of those charges, it is apparent from the record that the Claimant was discharged after all of those years of employment because he was not truthful with the Carrier regarding the suspension of his license. However, there was never a charge of dishonesty or violation of any other Carrier rule placed against the Claimant.

The Claimant's personal record reflects three reprimands in the mid-1980s, as well

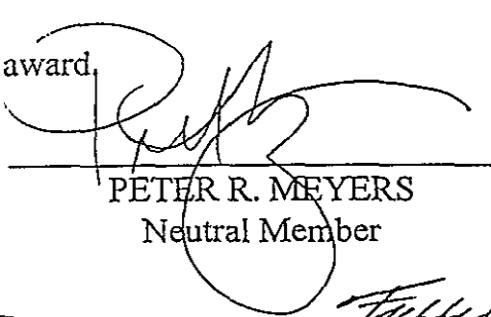
as a five-day suspension in 1986. The Claimant also received another reprimand and a fifteen-day suspension in the early 1990s.

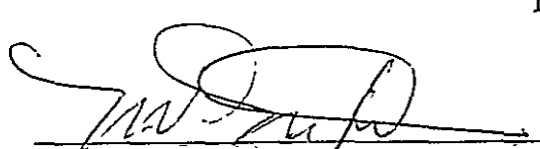
Although this Board recognizes that the Claimant was guilty of a serious offense in this case, the Claimant's long tenure and his previously good disciplinary record make it clear that to terminate him for this offense is unreasonable and arbitrary. This Board finds that the Claimant should be reinstated, but without back pay, and that he should be placed in a position where he does not have to operate a vehicle until such time as he obtains a driver's license. The time that the Claimant was off should be treated as a lengthy suspension. Moreover, his removal from his current position should be considered a disqualification.

The Claimant should recognize that this suspension of over eight months is serious discipline and that any further wrongdoing on his part will most assuredly lead to his dismissal.


AWARD

Claim sustained in part. The Claimant shall be reinstated, but without back pay in accordance with the above award.


PETER R. MEYERS
Neutral Member


Carrier Member

DATED: 11/21/94


Organization Member

DATED: 12/5/94