

BEFORE SPECIAL BOARD OF ADJUSTMENT 1037

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

Case No. 40

STATEMENT OF CLAIM:

The disqualification of Maintenance of Way Employee J. Frazier, ID# 164748, from the Foreman position on Force 5XC3, as a result of an investigation held on November 31, 1994, in Cumberland, Maryland, account his failure to comply with written and verbal instructions was without just cause, and that Mr. Frazier be reinstated to the Foreman position with compensation for all wage loss.

FINDINGS:

Claimant J. Frazier was employed by the Carrier as a foreman.

On November 11, 1994, the Carrier notified the Claimant to appear for a formal investigation into the charge that he failed to perform his foreman's duties on System Gang 5XC3 on Wednesday, November 2, 1994, in that he allegedly failed to comply with written and verbal instructions requiring him to report any incidents that occurred on his gang, specifically one involving H. J. Wilkins. The Claimant was withheld from the position of foreman on the 5XC3 gang pending the investigation and was informed of his displacement rights.

After one postponement, the hearing commenced in late November 1994. On December 9, 1994, the Carrier notified the Claimant that he had been found guilty as charged, and was disqualified as foreman, with all seniority in that rank removed.

The Claimant filed his appeal, challenging the Carrier's decision. The parties being unable 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 an employee in the Claimant's gang did have an injury on November 2, 1994. The accident was reported at 8:56 a. m. the next morning to the System Manager of Rail Gangs. The Carrier contends that the Claimant should have immediately contacted the System Manager of Rail Gangs and left a message after the Claimant was made aware of the incident. The Carrier contends that the Claimant did not follow the instructions which require the immediate notification of the System Manager; and as a result of that wrongdoing, the Claimant was disqualified from his foreman's position.

The Claimant, who has been employed by the Carrier for over 21 years and has been a foreman since 1979, admits that he received instructions requiring that he notify management immediately of any incident that occurs. The Claimant stated that he did not immediately file a report of this incident because the injured employee, Mr. Wilkins, "said he was okay" and "went back to work and he worked the rest of the day."

The Claimant testified that only the next morning, Mr. Wilkins informed him that his knee was swollen. The Claimant also stated that he did not have an assistant foreman nor an assistant foreman timekeeper and that he was the only one "running the job."

In addition, the Claimant testified that he was told by the injured employee that he "thought he sprained his knee" and that "it would be okay" and he didn't want to go to a

doctor. The Claimant stated that he immediately contacted the roadmaster and told him to contact Mr. Foster. He stated that he did not go directly to Mr. Foster because he was the only one there to run the job.

It is clear that despite the fact that the injured party did not really believe he was seriously injured, the Claimant had a responsibility of notifying management of the incident that had occurred. He failed to do it on the date that the injury happened and did not actually speak with management himself until the following morning. Consequently, this Board must find that the Claimant technically violated the rule which requires immediate notification.

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.

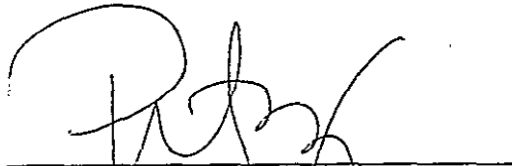
In the case at hand, we are faced with a Claimant who has been a relatively good employee for the Carrier for over two decades. He has served in a foreman capacity for more than fifteen years. Given that lengthy service record, this Board finds that it was improper for the Carrier to permanently disqualify the Claimant from his foreman seniority. This Board finds that a short suspension of his foreman's rights would have adequately put the Claimant on notice that if at any time in the future an incident occurs, the Claimant must, regardless of the situation, immediately notify upper-level

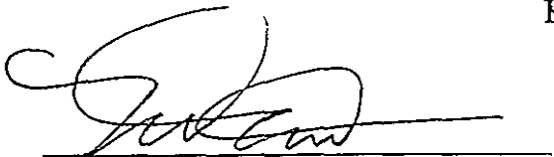
management so that an effort can be made to seek medical treatment for the injured party and deal with the issue on the other levels that become necessary.

Since the Carrier acted too harshly in this case by permanently terminating the foreman seniority of the Claimant, this Board orders that the Claimant be restored to his foreman seniority instantter, and the period that he was without his foreman seniority should be treated as a temporary disqualification for the purpose of putting him on notice that in the future he must more promptly notify management of any incident that occurs during his watch.

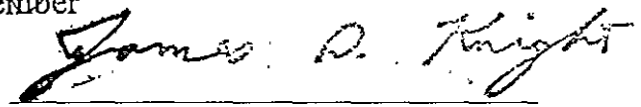
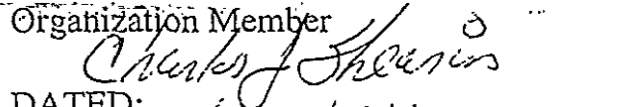
AWARD

Claim sustained in part. The Claimant is restored to his foreman seniority, but the period of time that he was disqualified from it shall be considered the discipline for his wrongdoing in this case.


PETER R. MEYERS
Neutral Member


Carrier Member

DATED: 2/22/95


Organization Member

DATED: 2/24/95