

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

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

Case No. 49

STATEMENT OF CLAIM:

Claim that Mr. W. E. McCullough - ID# 171071, be reinstated to service and made whole for all lost wages and benefits account being dismissed from service as a result of an investigation which was held on September 15, 1994 [sic], at Jacksonville, Florida.

FINDINGS:

In a letter dated August 16, 1993, the Claimant was notified that he was being charged with allegedly transmitting false information to an approaching train by giving the train a clear to proceed when the track was not clear. According to the employees operating Norfolk Southern Train Z-911, the bridge was not in a position to safely pass because the train had a red stop signal at the south end of the bridge and the lift span was in the open position. As a result of his alleged wrongdoing, the Claimant was instructed to appear for a formal investigation.

On October 4, 1993, the Claimant was notified that he was found guilty as charged and, therefore, he was being dismissed from the Carrier's service.

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 there is sufficient evidence in the record to support the finding that the Claimant was guilty of giving false information to an approaching train allowing that train to proceed when the bridge was not in a position to safely support that train. That action on the part of the Claimant was a very

serious violation of the rules, and the Carrier had every right to impose discipline for it.

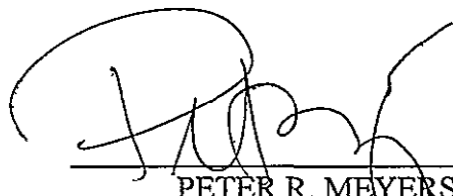
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary and capricious.

The Claimant in this case was in violation of a very serious rule. That violation could have led to extraordinary damage and injury to employees and equipment belonging to another Carrier. The Claimant was neglectful of his job and it appears that he had been repeatedly having problems paying attention while on duty. According to the testimony elicited at the hearing, the Claimant was apparently working a second job and getting very little sleep. As a result, he was making serious errors in judgment. The Claimant held a position of great responsibility for this Carrier, and he was not performing up to the task.

Given the seriousness of this wrongdoing and the previous disciplinary background of the Claimant, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated him. Therefore, the claim will be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

Dated: _____

Dated: _____