

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

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

Case No. 50

STATEMENT OF CLAIM:

Claim that Mr. J. Frazier, Jr. - ID# 164748, 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 18, 1995, at Forest City, North Carolina.

FINDINGS:

On September 8, 1995, the Claimant was notified by the Carrier that he was being removed from service pending a formal investigation into the charges that the Claimant was allegedly intoxicated and engaged in conduct unbecoming an employee on the night of August 29, 1995, after refusing to pay a phone bill at a Carrier lodging facility in North Carolina. The incident resulted in the Claimant being escorted from the lodging facility by a police officer.

The hearing took place on September 18, 1995. On October 6, 1995, the Carrier notified the Claimant that he had been found guilty of all charges and was being dismissed from the service of the Carrier effective that date.

On October 10, 1995, the Claimant filed his appeal, and this matter now comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has not presented sufficient evidence to prove that the Claimant was guilty of conduct unbecoming an employee on the date in question. A thorough review of the transcript reveals that the Claimant was unjustly accused by the motel employees of having made a long-distance

telephone call for which they were demanding payment. The Claimant told them on several occasions that he had not placed the call, and even went so far as to do some investigation to determine to whom the call had been placed in an effort to assist the motel operator in determining who had actually made the call from the motel. The motel operator and its employees, before they knew the entire truth, told the Claimant that they did not want him staying in the motel anymore. They prematurely called the police by dialing 911, and there was no emergency, and they came to a conclusion that the Claimant was somehow under the influence of alcohol based on very little evidence.

This Board is not unmindful of the rules that require employees of the railroad to behave properly when in a public place or in a motel spending the night with other railroad employees. Many Boards have upheld dismissals of employees for conduct unbecoming a railroad employee when they got drunk and acted belligerently or in a hostile manner in a motel setting. However, this case is not one of those cases. This motel operator simply refused to perform any investigation into whether or not that telephone call had actually been made by the Claimant after the Claimant denied responsibility for it. The Claimant was frustrated and vented that frustration a little. However, even after the Claimant did some of the work for the motel in determining the recipient of that telephone call, the motel operator impulsively decided to throw the Claimant out of the motel. This Board finds that the motel operator acted precipitously, which, since it was his motel, was his right. However, the Carrier, which has a higher burden in this matter, did not properly investigate the facts, or it would have determined that the Claimant was simply not guilty of the offenses with which he was charged.

For all of the above reasons, this Board finds that the claim must be sustained. The

Claimant shall be reinstated with full back pay and other benefits which he lost as a result of the wrongful discharge.

AWARD

Claim sustained. The Claimant shall be reinstated and made whole.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

Dated: _____

Dated: _____