

**BEFORE PUBLIC LAW BOARD 6563**

**UNITED TRANSPORTATION UNION  
YARDMASTERS DEPARTMENT**

**and**

**PORT TERMINAL RAILROAD ASSOCIATION**

**Case No. 1**

**STATEMENT OF CLAIM:**

Claim for and on behalf of Yardmaster J.G. Lusk, that he be returned to active service immediately; that his employee right and seniority be restored unimpaired; that his personal record be exculpated from any references to these unfounded allegations; and that he be compensated for all time lost inclusive of any and all overtime available to him; commencing February 5, 2002, and continuing on the same basis, thereafter, until such time as reinstatement is afforded.

**FINDINGS:**

At the time of the incident at issue, the Claimant was employed by the Carrier as a general yardmaster at North Yard.

By notice dated January 22, 2002, the Claimant was directed to attend a formal investigation and hearing into charges that he was insubordinate and engaged in conduct unbecoming an employee when he allegedly had a verbal confrontation with a crew member. The investigation was conducted as scheduled. As a result of the investigation, the Claimant was found guilty and dismissed from the Carrier's service effective February 5, 2002. The Organization thereafter filed a claim on the Claimant's behalf, challenging his dismissal. The Carrier denied the claim.

The Carrier contends that the Claimant was working under a last-chance

agreement that had been signed on October 12, 1999. The Carrier maintains that the January 19, 2002, verbal confrontation at issue was one in a long line of incidents that the Claimant had initiated during the course of his service with the Carrier. The Carrier points out that the Claimant's record is littered with violations and discipline that mirror the events relevant here. The Carrier has offered progressive discipline in an effort to manage the Claimant's argumentative and abusive behavior, as well as supporting and paying for the Claimant to complete anger management counseling through the Employee Assistance Program. Moreover, the Carrier emphasizes that it offered another leniency reinstatement to the Claimant on May 29, 2002, which the Claimant declined.

The Carrier confirms that it has the burden of establishing that the Claimant was insubordinate and failed to comply with the terms and conditions of the October 12, 1999, last-chance reinstatement. The Carrier maintains that due to the Claimant's history of verbal abuse and argumentative tendencies, the Carrier expected and the Claimant willingly agreed that the Claimant would immediately remove himself from a situation that had the potential to be confrontational and would immediately notify a Carrier officer. The Carrier argues that in the incident at issue, the Claimant initiated his conversation with Yardman Miller under the pretense that Miller had been insubordinate. The Carrier points out, however, that there is no evidence that the Assistant General Yardmaster asked for the Claimant's help in providing instructions to Miller. In fact, two hours before the conversation between the Claimant and Miller, Trainmaster Henderson

had responded to Miller's concern about the length of the train by instructing that the train be run in two different cuts.

The Carrier asserts that the Claimant's own testimony shows that he and Miller had "locked horns" in the past, and that the Claimant was "aware of the tension" between them in the six weeks prior to this altercation. The Carrier contends that the Claimant willfully made the decision to violate the conditions of his last-chance reinstatement by not notifying a trainmaster or a Carrier official. The Carrier argues that Miller gave credible and detailed testimony regarding their conversation, while the Claimant provided little detail. The Carrier points out that the Claimant concurred with all of Miller's testimony, except what was most damaging to his case. The Carrier emphasizes that the hearing officer had the authority to determine witness credibility, and the Carrier properly determined that there was sufficient evidence in the record to support the guilty finding.

The Carrier then points out that the Claimant's disciplinary history, including the last-chance reinstatement, supports the discipline assessed here. The Carrier asserts that dismissal in this case was not unreasonable, arbitrary, or capricious. The Carrier ultimately contends that the claim should be denied in its entirety.

The Organization contends that the Claimant performed all of his duties, and the Carrier failed to support its charges with evidence of probative value to justify dismissal, the most severe of all punishments. The Organization maintains that the Carrier dismissed the Claimant without any probative proof.

The Organization additionally maintains that the Carrier is responsible for assuring the fairness and impartiality of the hearing and the administration of discipline. The Organization asserts that in this case, the Carrier has miserably failed to meet these obligations. The Organization points out that the Carrier compounded its problems by attempting to cut a deal with the Claimant to return to work, without contacting the Claimant's Organization representative. The Organization asserts that the Claimant should have contacted the General Chairman, and not the Claimant directly, with any reinstatement offers.

The Organization maintains that the claim should be sustained.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to prove that the Claimant violated any terms of the last-chance agreement that he signed on October 12, 1999. Although there were some verbal words being used by the Claimant on January 19, 2002, there is simply insufficient evidence in this record to show that those words comprised activity that represents the Claimant acting in such a manner that would cause the last-chance agreement language to result in his discharge. Three of the witnesses did not even hear the conversation. There may have been a disagreement, but the Claimant did not agree in his last-chance agreement to agree with everybody. The Claimant was required to avoid confrontations, and there is no


showing in this record that he did not do that in this case.


Since the Carrier bears the burden of proof in all disciplinary actions, this Board must find that the Carrier has failed to meet that burden of proof in this case. Therefore, the claim will be sustained.

**AWARD:**

The claim is sustained. The Claimant shall be reinstated with full back pay and other benefits.

  
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**PETER R. MEYERS**  
Neutral Member

  
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ORGANIZATION MEMBER  
DATED: Nov. 15, 2003

  
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CARRIER MEMBER  
DATED: December 5, 2003