

**BEFORE PUBLIC LAW BOARD NO. 5896**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION**

**Case No. 180**

**STATEMENT OF CLAIM:**

Appeal of forced resignation of Claimant R.L. McDonald, without investigation, on or about October 27, 2000.

**FINDINGS:**

Claimant R.L. McDonald was employed by the Carrier on System Production Gang 5XC1 during the time period relevant to this matter.

On or about October 27, 2000, the Claimant was returning home from his work week, riding with friends, and he advised his friends that they could drop him off at the Roadmaster's office in LaGrange, Georgia, and he would have his wife pick him up. Because the Roadmaster's officer was locked when the Claimant arrived there at about 1:00 a.m., the Claimant was unable to call his wife. The Claimant found a Carrier vehicle with keys in the ignition, and he wrongfully decided to borrow the vehicle to get home; he then later returned the vehicle to LaGrange.

As the Claimant was returning the vehicle to LaGrange later that night, at about 2:00 a.m., the vehicle broke down, and the Claimant left it on the side of the road. Meanwhile, the Carrier's police were informed of the missing vehicle, and the matter was reported to the Atlanta Police Department as a stolen vehicle. The vehicle subsequently was discovered at the roadside, retrieved with a wrecker, and towed to a repair shop.

When the Claimant subsequently arrived at the Roadmaster's office, the Claimant was informed that the Atlanta Police Department was investigating the matter as a vehicle theft, and that the Claimant could either face felony charges or resign his job. The Claimant chose to resign.

The Organization filed a claim on the Claimant's behalf, contending that the Carrier violated Rule 25 of the parties' collective bargaining agreement when it permitted the Claimant's dismissal without written confirmation, without offering him the opportunity to contact an Organization representative, prior to reducing statements to writing, without furnishing the Organization representative with copies of any written statements, without providing written notice of charges, and without scheduling a hearing within twenty days of the date that management had knowledge of the incident. The Carrier denied the claim.

The Carrier maintains that the Organization failed to provide any additional information or evidence that would cause the Carrier to deviate from its handling of the Claimant's situation. The Carrier contends that the claim should be denied in its entirety.

The Organization contends that because the Claimant had more than twenty years of service with the Carrier and unblemished record, the Carrier handled this matter in an inappropriate fashion. The Organization emphasizes that the disciplinary procedures set forth in Rule 25 of the Agreement are more than ample to handle situations such as the one at issue. The Carrier, however, clearly had no intention of considering the Rule 25 process in this matter. The Organization argues that the Carrier washed its hands of the matter.

The Organization acknowledges that the Carrier should be commended for its establishment of a code of ethics, as well as its involvement in such cooperative programs as the

Individual Development and Personal Accountability Policy, Safety Program, IRCs, Sensitivity Training, and others. The Organization maintains, however, that the Carrier's handling of the Claimant's situation suggests that the Carrier's stated wish to "enrich our internal compact with employees" is not genuine.

The Organization contends that the claim should be sustained, and the Claimant immediately returned to service.

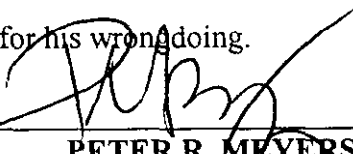
The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the record in this case, and we find that there is sufficient evidence that the Claimant acted wrongfully in this matter which justified the issuance of discipline. However, there really is no basis for a complete termination of this Claimant given his over twenty years of service for the Carrier. This Board is uncomfortable with the "resignation" of the Claimant in this situation.

Consequently, we find that the Claimant shall be reinstated to service, but without back pay, with all of his seniority and benefits restored. The time that the Claimant was off shall be considered a lengthy disciplinary suspension for his wrongful behavior in this case.

**AWARD:**

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension for his wrongdoing.

  
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**PETER R. MEYERS**  
Neutral Member

Dated: 8/15/02