

BEFORE PUBLIC LAW BOARD NO. 5896

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CSX TRANSPORTATION**

Case No. 198

STATEMENT OF CLAIM:

Appeal of the dismissal of M. McBryde, ID # 375229.

FINDINGS:

On August 7, 2003, the Carrier conducted a formal investigation and hearing to develop the facts and information regarding charges that the Claimant had violated Carrier's Operating rules when a rail change-out vehicle that Claimant was operating was left at a garage in Sumter, South Carolina, on July 7, 2003. The Claimant allegedly told the garage owner to inform the Carrier on July 9, 2003, that the vehicle still was in the garage and was still being repaired. However, the Claimant actually had allegedly driven the vehicle away on July 9, 2003, or prior to that. There were also charges against the Claimant that he had failed to protect his assignment on Force 5FE9 by failing to report for work on July 9 and July 10, 2003. The Claimant was not present for this hearing. As a result of this investigation, the Carrier found the Claimant guilty as charged and dismissed the Claimant from the Carrier's service. The Organization filed a claim on the Claimant's behalf, challenging his dismissal. The Carrier denied the claim.

The Carrier contends that the evidence developed at the hearing supports a finding that the Claimant is guilty as charged. The Carrier asserts that based upon the Claimant's egregious behavior, disregard for the truth, deliberate attempt to deceive his supervisors,

and unwillingness to report for work, the Claimant's dismissal from the Carrier's service was the appropriate disciplinary response. The Carrier emphasizes that the Claimant lied about the truck being under repair, and discharge was appropriate under the circumstances. The Carrier contends that the instant claim should be denied in its entirety.

The Organization contends that the Carrier improperly proceeded with the hearing despite the Claimant's absence. The Organization maintains that the instant claim should be sustained in its entirety.

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

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The record reveals that the Claimant did not show up for the first hearing on July 29, 2003. The Claimant was later instructed by a conference call to attend the rescheduled hearing on August 7, 2003. The Claimant selected the starting time of 4 p.m. By 4:45 p.m., the Claimant had not yet arrived and so the hearing was held without the Claimant being present. This Board finds that the Claimant had ample opportunity to attend the hearing and he chose not to do so.

With respect to the substantive issues, 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 violating various Carrier rules prohibiting absenting himself from duty, being dishonest with the Carrier, and making false statements. The Claimant's actions violated CSXT Operating Rules 500(1), 501(4),

501(7). The Claimant also failed to protect his assignment as he is required to do by other Operating Rules.

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.

The record reveals that the Claimant had relatively short seniority with the Carrier. The rule violations were extremely serious and by clearly acting in violation of those rules, the Claimant subjected himself to discharge. This Board cannot find that the Carrier's action in terminating the Claimant's employment was unreasonably, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

DATED: 12/20/04