

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 4

STATEMENT OF CLAIM:

Appeal of Claimant G. E. Kilmer's dismissal from the service of the Carrier, effective April 21, 1999.

FINDINGS:

Claimant G. E. Kilmer was employed by the Carrier as a vehicle operator at the time of the claim.

On March 5, 1999, the Carrier notified the Claimant to appear for a formal hearing to determine his responsibility, if any, in connection with his unauthorized use of the Carrier's telephone calling card between September 1, 1998, and January 31, 1999, while he was assigned as a vehicle operator in the Production Work Train Gang working the Albany Division and while he was off duty due to disability as discovered by the Carrier on February 19, 1999.

The hearing took place on March 17, 1999. On April 21, 1999, the Carrier notified the Claimant that he was found guilty of all charges and was being assessed discipline of dismissal in all capacities effective that date.

The Organization filed a claim on behalf of the Claimant challenging the dismissal.

The parties being unable to resolve the issue, 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.

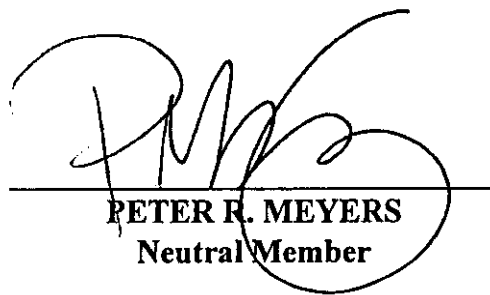
This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has presented sufficient evidence to prove that the Claimant was guilty of violating Carrier rules when he made hundreds of unauthorized telephone calls to family and friends and billed them to the Carrier's account. Although the Claimant testified that he needed to speak with those people for support in a personal crisis time, the Claimant admitted that the Carrier did not authorize those calls and that he did not have any permission to use the Carrier's credit card. It is clear that the Claimant's actions amounted to theft of Carrier property.

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, or capricious.

Despite the fact that the Claimant had over twenty-five years of service with the Carrier, the wrongdoing of theft of Carrier property in this case is serious enough to support the Carrier's action of dismissal. Therefore, the claim must be denied.

AWARD:

The claim is denied.


PETER R. MEYERS
Neutral Member

1/24/00