

**BEFORE PUBLIC LAW BOARD NO. 6239**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION**

**Case No. 38**

**STATEMENT OF CLAIM:**

Appeal of the ten-day actual suspension issued to Claimant S. R. Clackler as a result of investigation held on March 12, 2003, in regards to Claimant's violation of Carrier's Operating Rules 500(1) and 500-A and conduct unbecoming an employee.

**FINDINGS:**

The Claimant was employed by the Carrier as a bridge department mechanic at the time of this claim.

The Carrier's initial Notice of Investigation in this matter was issued on October 30, 2002, but was subsequently postponed. On February 26, 2003, the Carrier re-issued its Notice of Investigation notifying the Claimant to appear for a formal investigation in connection with his being absent without permission from his duty as a bridge mechanic on Force 6M67 on October 7 and 14, 2002. The Carrier also pointed out the Claimant's jail confinement for a revoked driver's license and actual driving violations. The Carrier charged the Claimant with violation of Carrier Operating Rules 500(1) and 500-A and conduct unbecoming an employee.

The hearing took place on March 12, 2003. On April 1, 2003, the Carrier

notified the Claimant that due to his consistent failure to report to his assigned position in a timely manner, he had been found guilty of violating Rule 500, Part 1, and was being assessed discipline of a ten-day actual suspension beginning April 7, 2003.

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

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 being absent without permission from his duty as a bridge mechanic on October 7 and 14, 2002. The Claimant admitted that he was not at work on those days and there is no evidence that he had contacted supervision to notify them that he would not be coming to work.

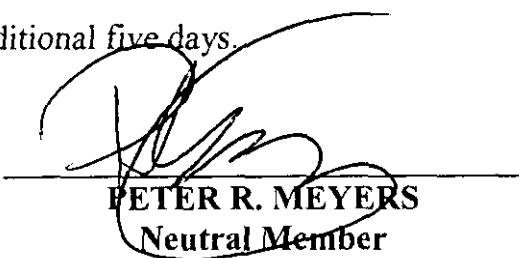
With respect to the charge of conduct unbecoming an employee, although this Board recognizes that the Claimant was spending some time in jail relating to a traffic offense, there is insufficient evidence in this record to prove that the Claimant was guilty of the offense of conduct unbecoming an employee. There is no evidence that the short time that the Claimant spent in jail was made public, nor is there any indication in this record that that time spent in jail had any impact whatsoever on the Carrier or on the Carrier's image. The Claimant does not need a driver's license to perform his work. Employees are often charged with driving-related offenses and that does not rise to the level of conduct unbecoming an employee.

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 Claimant in this case received a ten-day actual suspension for the two offenses. Since this Board has found that the Claimant was proven guilty of only the attendance violation and not the "conduct unbecoming an employee" violation, this Board finds that the ten-day suspension shall be reduced to a five-day suspension, and the Claimant shall be made whole for the additional five days.

**AWARD:**

The claim is sustained in part and denied in part. The ten-day suspension of the Claimant shall be reduced to a five-day suspension, and the Claimant shall be made whole for the additional five days.



PETER R. MEYERS  
Neutral Member

Dated: 12/23/03