

**BEFORE PUBLIC LAW BOARD NO. 6239**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION**

**Case No. 39**

**STATEMENT OF CLAIM:**

Appeal of the dismissal issued to Claimant D. C. Bray, Jr., as a result of investigation held on April 2, 2003, in regards to Claimant's violation of Carrier's Operating Rules 516, 501(4), and General Rule O.

**FINDINGS:**

The Claimant was employed by the Carrier as a bridgetender at the time of this claim.

On March 17, 2003, the Carrier notified the Claimant to appear for a formal investigation in connection with his failure to control the swing of the Mobile River Drawbridge while closing on March 13, 2003, on the M&M Subdivision, which resulted in damage to the linear driver. The Carrier informed the Claimant that, as a result of his actions, trains were required to operate at restricted speed and were severely delayed due to the damage, which left red or stop aspect signals for all movements until 0530 on March 14, 2003, when repairs were made. The Carrier further informed the Claimant that two bridge welders had to be called out on overtime to make the repairs. The Carrier charged the Claimant with failure to report the incident to his supervisor and violation of Carrier Operating Rules 516, 501(4), and General Rule O. The Claimant was withheld from service pending the

results of the investigation.

The hearing took place on April 2, 2003. On April 17, 2003, the Carrier notified the Claimant that due to his previous record of similar incidents, his failure to report such incidents to his supervisor, and his having been found guilty of all charges in this case, he was being assessed discipline of dismissal.

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 violating Operating Rules 516, 501(4), and General Rule O. The Claimant failed to control, while closing, the swing of the Mobile River Drawbridge which resulted in damage to the linear driver. The result of the Claimant's inefficiency led to trains that had to operate at a restricted speed and a great deal of damage and expense in the repair.

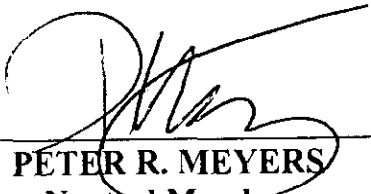
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

Given the seriousness of this offense of which the Claimant was found guilty, plus the previous disciplinary background of the Claimant, which includes a thirty-day suspension in September 2001, and the relatively short seniority of the

Claimant, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously<sup>1</sup> when it terminated the Claimant's employment. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

Dated: \_\_\_\_\_

12/23/03