

**BEFORE PUBLIC LAW BOARD NO. 6239**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION**

**Case No. 44**

**STATEMENT OF CLAIM:**

Appeal of the thirty-day suspension issued to Claimant P. R. Larson as a result of investigation held on September 17, 2003, in regards to Claimant's failure to properly perform duties.

**FINDINGS:**

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

On August 18, 2003, the Carrier issued a notice informing the Claimant to appear for a formal investigation in connection with an incident that occurred on August 5, 2003, between the hours of 0800 and 1205 hours, while he was working as a foreman on Force 5X46 on the Cumberland Subdivision. The Carrier indicated that the Claimant had improperly handled the movement of Carrier equipment BST96, which resulted in a four- to five-hour work delay. The Carrier charged the Claimant with failure to perform his duties in a proper manner and violation of Carrier Operating Rule 501.

After one postponement, the hearing took place on September 17, 2003. On October 7, 2003, the Carrier notified the Claimant that he had been found guilty of all charges and he was being assessed discipline of a thirty-day

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suspension and removal of his foreman rights from all rosters for a period of one year effective October 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 the Carrier has failed to meet its burden of proof that the Claimant violated Operating Rule 501 or any other rules on August 5, 2003. There is simply insufficient evidence in this record that the Claimant was guilty of failing to perform his responsibilities on the date in question. It is obvious from the record that there was a delay of nearly five hours of the Claimant's force accessing track to perform work. However, we find that the Carrier has failed to prove with sufficient evidence that the Claimant's actions or inactions on the date in question led to that delay.

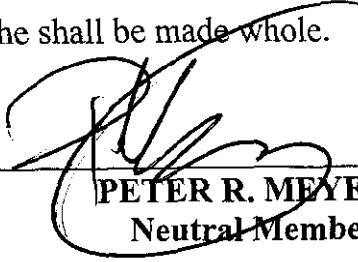
It is fundamental that the Carrier bears the burden of proof in all discipline cases. In this case, there is no question that something went wrong, but there is insufficient evidence in this record that it was the Claimant's fault or that he did anything in violation of the rules. Therefore, the claim must be sustained.

**AWARD:**

The claim is sustained. The thirty-day suspension shall be removed from

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the Claimant's record and he shall be made whole.



PETER R. MEYERS  
Neutral Member

Dated: 4/30/04