

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CN – WISCONSIN CENTRAL RAILROAD**

Case No. 20

STATEMENT OF CLAIM:

Appeal of the dismissal of Claimant T.R. Miller for alleged violation of Carrier rules, policies, and/or instructions in connection with his alleged failure to inform the Carrier of the change in his driver status and his operation of a Carrier vehicle without proper licensing on August 31, 2006.

FINDINGS:

By letter dated September 18, 2006, the Claimant was notified to appear at a formal hearing and investigation to determine whether he had violated any Carrier rules, policies, and/or instructions in connection with his alleged failure to inform the Carrier of a change in his driver's license status, and his alleged operation of a Carrier vehicle without proper licensing on August 31, 2006. After a postponement, the investigation was conducted on October 25, 2006. By letter dated November 13, 2006, the Claimant was notified that as a result of the hearing, he was found guilty of violating Carrier General Rule H and Life Manual – S.A.F.E. Rule G#3. This letter further informed the Claimant that as a result of these findings, the Claimant was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge the Claimant. The Carrier denied the claim.

The Carrier contends that the Claimant's own actions and/or inactions resulted in

his dismissal. The Carrier emphasizes that it declined the request for leniency and reinstatement in this case, and the Claimant's dismissal should stand. The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the transcript, as well as a letter from the Claimant about this matter, recognizes that the Claimant's failure to report the change in his driving status was a mistake, and not a willful intent to violate the Carrier's rules and regulations.

The Organization emphasizes that the Claimant has a long service record, is nearing retirement, and wishes to continue in the Carrier's service in whatever capacity his qualifications will allow.

The Organization ultimately contends 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 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 failing to inform the Carrier of the change in his driver's license status. The Claimant failed to notify the Carrier that his driver's license status had changed after he was convicted of driving while impaired.

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

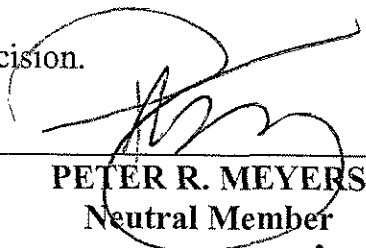
actions to have been unreasonable, arbitrary, or capricious.

The record reveals that this Claimant has been employed by the Carrier since October of 1987. Given that lengthy seniority, this Board finds that the Carrier acted arbitrarily when it terminated the Claimant's employment for this offense. This Board orders that the Claimant shall be reinstated to service on a last-chance basis, but without any back pay. The Claimant shall begin and successfully complete a drug and alcohol program selected by the Carrier. In addition, he shall only be returned to work after successfully completing that program and he shall be required to participate in the Carrier's EAP program for a period of five years. If the Claimant has not completed the alcohol and drug treatment program by the time this award is issued, then the Claimant's discharge shall remain in full force and effect.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service on a last-chance basis, but with no back pay. The Claimant shall have already begun and successfully completed a drug and alcohol program selected by the Carrier. The Claimant shall be returned to work after successfully completing that program and he shall be required to participate in the Carrier's EAP program for a period of five years in

accordance with the above decision.


PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER

DATED: Sept. 5, 2008


CARRIER MEMBER

DATED: Sept 5, 2008