

**BEFORE PUBLIC LAW BOARD NO. 5896**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION**

**Case No. 183**

**STATEMENT OF CLAIM:**

Appeal of dismissal of Claimant K. L. Rea for conduct unbecoming an employee involving petit theft and incarceration for ninety days as a result of investigation conducted on December 28, 2001.

**FINDINGS:**

Claimant K. L. Rea was employed by the Carrier as an assistant foreman during the relevant time period.

By letter dated December 11, 2001, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with his plea of guilty to petit theft charges on November 29, 2001, resulting in his being sentenced to ninety days in the Nassau County Jail. The Carrier charged the Claimant with conduct unbecoming an employee and withheld the Claimant from service pending the investigation into the matter.

The hearing took place on December 28, 2001. The Claimant was not present. On January 15, 2002, the Carrier notified the Claimant that he had been found guilty on all charges, and that he was being assessed the penalty of dismissal from the service of the Carrier, effective immediately.

The Organization filed a claim on the Claimant's behalf, challenging the dismissal and requesting that the Claimant be reinstated with full seniority and compensated for all lost time at the appropriate rate of pay.

The Carrier denied the claim on the basis of the provisions as outlined in Part III of the Individual Development and Accountability Policy. The Carrier maintains that, under these provisions, even a single rule violation or offense may be so serious or egregious as to warrant dismissal. In this case, the Carrier argues that the seriousness of the Claimant's arrest, conviction, and incarceration justified his dismissal. The Carrier also points out that the Claimant was given a timely notice of charge to be present at the hearing and was afforded a fair and impartial hearing. In regards to the Claimant's voluntary admission of his involvement in the incident, the Carrier argues that such honesty does not mitigate the fact that he was jailed for theft. In addition, the Carrier maintains that the Claimant was properly dismissed for off-duty conduct because his conduct and subsequent jail sentence was unbecoming an employee.

The Organization argues that the incident at issue occurred during off-duty hours and the Claimant was not under pay from the Carrier. In addition, the Organization points out that the Claimant was not near or on Carrier property at the time of the incident. The Organization also maintains that the Claimant took it upon himself to report the incident in question to his supervisor and was being honest with his supervisor in bringing the matter to the Carrier's attention. The Organization argues that the Carrier failed to recognize that the Claimant voluntarily informed the Carrier of the incident. The Organization further points out that although the Claimant was employed with the Carrier for a short period of time, he showed great courage in bringing the matter into the open and admitting his guilt and accepting the civil penalties assessed against him. In addition, the Organization contends that this is a first-time offense for the Claimant and that his termination from the Carrier's service is not warranted and not within the confines of the Individual Development and Personal Accountability Policy.

The parties being unable to resolve the issues, this matter comes before this Board.

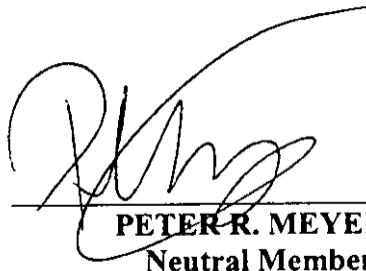
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record that the Claimant was guilty of conduct unbecoming an employee. The record reveals that the Claimant pled guilty to theft charges and was sentenced to ninety days in Nassau County Jail. His guilty plea and his sentence were all set forth in a local newspaper article on December 5, 2001.

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.

This Claimant pleaded guilty to theft in that he stole a large amount of fruit from a fruit stand. The Claimant was sentenced to ninety day in jail and fined. That certainly constitutes a serious violation of the rule prohibiting conduct unbecoming an employee. The record also reveals that this Claimant was hired in late 2000 and had worked for just over one year before he was terminated in January of 2002. Given that short seniority and the seriousness of the offense, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.



**PETER R. MEYERS**  
Neutral Member

**Dated: October 4, 2002**