

BEFORE PUBLIC LAW BOARD NO. 5896

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 185

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant M. F. Ryan for conduct unbecoming a Carrier employee in connection with the Claimant's conviction on charges of felony abduction on January 28, 2002.

FINDINGS:

By letter dated March 14, 2002, the Carrier notified the Claimant, M. F. Ryan, to appear for a formal investigation to determine the facts and place responsibility in connection with conduct unbecoming a Carrier employee when the Claimant entered a guilty plea and was subsequently convicted on charges of felony abduction on January 28, 2002. The Carrier charged the Claimant with violating Rules 501 and 501-A.

The hearing took place on April 1, 2002. The Claimant was not present. On April 8, 2002, the Carrier notified the Claimant that he had been found guilty of all charges and was being issued discipline of dismissal effective that date.

The Organization filed a claim on the Claimant's behalf, challenging the discipline. The Carrier denied the claim.

The Carrier argues that the Claimant's failure to attend his own investigation was due to his five-year confinement in the Hamilton County Jail in Cincinnati, Ohio, resulting from his January 28, 2002, conviction of abduction and felonious assault. The Carrier points out that the Claimant was afforded a fair and impartial hearing and that the record contains sufficient

evidence to conclude that the Claimant was guilty of the charges against him. The Carrier maintains that there is no reason to consider leniency. The Carrier contends that the Organization attempts to excuse the Claimant's conduct on alcoholism. However, the Carrier maintains that the Claimant was involved in behavior that resulted in a serious criminal act unrelated to his alcoholism and which cannot be tolerated by the Carrier.

The Organization argues that the discipline issued to the Claimant in this case is harsh and excessive especially since the Claimant admitted he had a serious addiction to alcohol and was under medical treatment for his dependency. The Organization points out that all the problems associated with the Claimant stem from his dependency on alcohol and that the Claimant should be afforded leniency. The Organization argues that the Claimant could not attend his own investigation because he was under medical treatment for his dependency. The Organization requests that the Claimant be afforded a leave of absence and that he be allowed to complete his rehabilitation under the guidance of his Employee Assistance Program (EAP) counselor in order that he be returned to work.

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 to support the finding that the Claimant pled guilty to the felony of abduction. We find that the Carrier properly considered this wrongdoing on the part of the Claimant as being conduct unbecoming a railroad employee. The Claimant was sentenced to five years in the penitentiary.

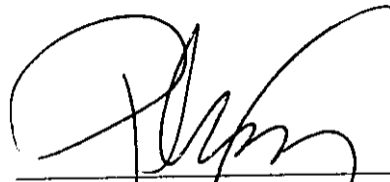
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been

unreasonable, arbitrary, or capricious.

It is fundamental that if an employee is found guilty of a serious felony such as the one of abduction and sentenced to five years of incarceration, he has engaged in conduct unbecoming a railroad employee. Given the seriousness of that offense, plus the poor disciplinary background of the Claimant, which included several suspensions, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 7/16/03