

BEFORE PUBLIC LAW BOARD NO. 5896

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CSX TRANSPORTATION**

Case No. 190

STATEMENT OF CLAIM:

Appeal of the ten-day suspension of G.J. Weimer.

FINDINGS:

At the time of the events leading to this claim, the Claimant was employed by the Carrier as a maintenance of way employee.

On May 16, 2003, the Carrier conducted a formal investigation of charges that on January 8, 2003, the Claimant violated Operating Rule 504 when he lost a Carrier hand-held two-way radio while on duty at Trout River draw bridge. As a result of this investigation, the Claimant was found guilty as charged, and he was assessed a ten-day suspension. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's decision to suspend the Claimant. The Carrier denied the claim.

The Carrier contends that the testimony and the evidence submitted during the investigation supports the finding that the Claimant is guilty of the charges at issue. The Carrier points out that during his testimony, the Claimant acknowledged that he was the employee responsible for the care and condition of the radio in question.

The Carrier argues that the instant claim should be denied in its entirety.

The Organization contends that there was no just cause for the issuance of the ten-day suspension to the Claimant and that the suspension should be removed from the Claimant's record and he should be made whole for any losses.

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 violated Operating Rule 504 when he lost, or at least failed to return in good working order, the handheld two-way radio that he was issued by the Carrier. The Claimant admitted at the hearing that he lost the radio on January 8 and that he was responsible for the care of that radio. Although the Claimant stated that he does not believe that he did anything wrong, he does admit that he lost the radio on the date in question.

Operating Rule 504 states:

Employees must exercise care and economy in the use of railroad property. Employees must return in good order all property assigned to them or entrusted to their care when:

1. Leaving the service, or
2. Upon demand by proper authority.

There is no question that the Claimant acted in violation of Operating Rule 504 in this case.

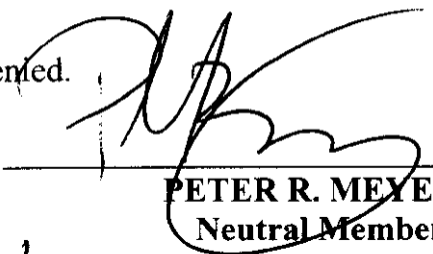
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of

discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case had previously received a ten-day suspension for excessive absenteeism. Given the offense involved in this matter, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it assessed the ten-day suspension to the Claimant. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 2/28/07