

BEFORE PUBLIC LAW BOARD NO. 5896

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

Case No. 192

STATEMENT OF CLAIM:

Appeal of the dismissal of W.K. Yokum.

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 February 13, 2003, the Carrier conducted a formal investigation of charges that the Claimant engaged in conduct unbecoming an employee, made false statements concerning matters under investigation, and operated a Carrier vehicle while under the influence of alcohol, in connection with the Claimant's pleading guilty to driving under the influence of alcohol as a result of a vehicle accident that occurred on October 19, 2001. As a result of this investigation, the Claimant was found guilty as charged, and he was dismissed from the Carrier's service. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's dismissal of the Claimant. The Carrier denied the claim.

The Carrier contends that the testimony and evidence submitted during the investigation demonstrates that the Claimant was afforded a fair and impartial hearing, and it contains sufficient credible evidence to support the Carrier's determination that the Claimant is guilty of the charges. The Carrier points out that during the investigation on

November 6, 2002, the Claimant repeatedly stated that he was not under the influence of alcohol at the time of his accident in a Carrier vehicle on October 19, 2001. The Carrier further emphasizes that during the investigation on February 13, 2003, the evidence presented established that the Claimant was charged with driving under the influence, then the Claimant entered into a plea bargain on this charge that involved several fines, sixty days in the county jail, alcohol treatment for one year, and revocation of the Claimant's driver's license for one year. The Carrier asserts that although the Organization's attempt to portray a "plea bargain" as a not guilty plea is inventive, it is clear that it is totally without merit. The Carrier maintains that the Claimant placed himself and the occupants of the vehicle he struck in a life-critical situation. Moreover, the Claimant subjected the Carrier to liability.

The Carrier contends that the instant claim is without merit and should be denied in its entirety.

The Organization contends that contrary to the Carrier's assertion, the transcript does not support the charges lodged against the Claimant. The Organization argues that Carrier witness Ison, a Special Agent with the Carrier's Police Department, admitted that he was involved in this case only briefly. The Organization points out that the officer who handled the case has retired, and he was not available for questioning. The Organization further asserts that although Carrier witness Daniels stated that the Claimant's guilty plea on DUI charges relating to the October 2001 incident shows that the Claimant had falsified matters under investigation, Daniels admitted that he was not present during the Claimant's court proceedings and therefore was not knowledgeable

about the circumstances that resulted in the guilty plea.

The Organization contends that the Claimant's dismissal cannot stand. The Organization maintains that the instant claim should be sustained, the January 24, 2003, charge letter and all matters relating to it be removed from the Claimant's personal file, and the Claimant should be reinstated to the Carrier's service and made whole for all 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 made false statements in violation of the Carrier's operating rule when he initially denied that he had been under the influence of alcohol at the time of the accident which occurred when he was operating a Carrier vehicle on October 19, 2001. The Carrier's rules prohibit Carrier employees from making false statements concerning matters under investigation. The Claimant subsequently pled guilty to operating the CSX vehicle while under the influence of alcohol and was sentenced to jail and to pay a fine. Moreover, his license to operate a motor vehicle was revoked for a period of twenty-four months.

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 in this case confirms that the Claimant was guilty of a very serious

offense. The Claimant was involved in a traffic accident while driving a Carrier vehicle, and the Carrier performed an investigation and the Claimant denied that he had been operating the vehicle while under the influence of alcohol. He subsequently pled guilty, thereby admitting that he did in fact operate that vehicle under the influence of alcohol. Obviously, he had been dishonest with the Carrier during the investigation. The Carrier has a right to expect honesty from its employees in all respects, especially when required to fill out a report relating to an accident that occurred at work.

The Claimant in this case had been employed by the Carrier since 1979. However, during that period of time, the Claimant had received a ten-day suspension for failing to protect his assignment. He also had received some warning notices for various offenses. Given the seriousness of this offense, despite the fact that the Claimant has been employed by the Carrier for well over twenty years, this Board cannot find that the Carrier acted without just cause or acted unreasonably, arbitrarily, or capriciously when it dismissed the Claimant. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 3/15/07