

**BEFORE PUBLIC LAW BOARD NO. 6239**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION**

**Case No. 40**

**STATEMENT OF CLAIM:**

Appeal of the dismissal issued to Claimant K. D. Burkes, Jr., as a result of investigation held on March 3, 2003, in regards to Claimant's absence from work without permission from proper authority and violation of Carrier Operating Rule 500(1) and Rule 26(a) of the current working agreement between the parties.

**FINDINGS:**

The Claimant was employed by the Carrier as a bridge mechanic at the time of this claim.

On January 24, 2003, the Carrier notified the Claimant to appear for a formal investigation in connection with his unexcused absence from his position as a bridge mechanic on Force 6A71 on January 6, 14, 15, and 16, 2003. The Carrier charged the Claimant with being absent without permission from proper authority and violation of Carrier Operating Rule 500(1) and Rule 26(a) of the parties' current working agreement.

After one postponement, the hearing took place on March 3, 2003. On March 18, 2003, the Carrier notified the Claimant that due to his previous record of unexcused absences and his having been found guilty of all charges in this case, he was being assessed discipline of dismissal.

The parties being unable to resolve their dispute, this matter comes before this Board.<sup>1</sup>

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 being absent from work without an excuse on January 6, 14, 15, and 16, 2003. His absence without permission on those dates clearly violated Carrier Operating Rule 500(1), which requires employees to report for duty at the designated time and place and not be off work without permission from their immediate supervisor. In addition, the Claimant's action clearly violated Rule 26(a), which requires employees who are unable to report for work for any reason to notify their supervisor as soon as possible.

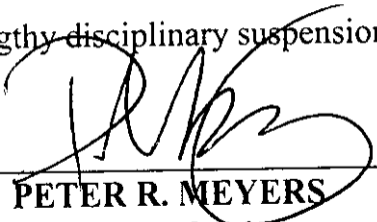
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

The Claimant in this case has been employed by the Carrier since June 2, 1980. In that twenty-three year period, the Claimant had received a discipline letter in 1995 for failure to report for duty and a five-day suspension for violating Rule 500. Carrier Rule 26(b) calls for forfeit of seniority for employees who are absent in excess of fourteen days without notifying their supervisor or proper Carrier official. In this case, the Claimant was off three consecutive days and

thereby put himself in position for further discipline. However, this Board must find that it was unreasonable and arbitrary for the Carrier terminate this employee with twenty-three years of seniority when he did not act in violation of 26(b) and simply accumulated some more AWOLs which justified discipline, but not separation. Consequently, this Board finds that the Claimant shall be reinstated to service, but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension for his violation of Carrier rules. The Claimant should be put on notice that any further AWOLs may lead to his permanent discharge.

**AWARD:**

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.

  
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**PETER R. MEYERS**  
Neutral Member

Dated: 12/23/03