

BEFORE PUBLIC LAW BOARD NO. 6239
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CSX TRANSPORTATION
Case No. 42

STATEMENT OF CLAIM:

Appeal of the dismissal issued to Claimant C. L. Waldren as a result of investigation held on September 10, 2003, in regards to Claimant's unauthorized use of his CLC card, fraud, insubordination, conduct unbecoming an employee, and violations of the Carrier's CLC policy and Operating Rule 501.

FINDINGS:

The Claimant was employed by the Carrier as a track repairman at the time of this claim.

On August 19, 2003, the Carrier notified the Claimant to appear for a formal investigation in connection with the Claimant's unauthorized use of CLC facilities, at the Carrier's expense, on assigned rest days and his claiming weekly travel allowances while assigned to System Production Force 6XT1. The Carrier listed the following dates as those on which the Claimant wrongfully occupied CLC facilities at the Carrier's expense and for which the Claimant received a weekly travel allowance: March 14, 15, 21, and 22, 2003; April 19, 2003; May 2 and 3, 2003; June 7, 13, 14, 27, and 28, 2003; and July 18 2003. The Carrier informed the Claimant that he was being charged with the unauthorized use of his CLC card, fraud, insubordination, conduct unbecoming an employee, and

violations of the Carrier's CLC policy and Operating Rule 501.

The hearing took place on September 10, 2003. On September 26, 2003, the Carrier notified the Claimant that he had been found guilty of all charges and was being dismissed from the service of the Carrier.

The parties being unable to resolve their dispute, 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 was guilty of the unauthorized use of his CLC card, as well as fraud and conduct unbecoming an employee of the Carrier. The record is clear that the Claimant used the Carrier credit card to charge rooms in hotels on Saturday nights and other weekend nights when he was not performing services for the Carrier. It is evident from the record that that action by the Claimant violated the Carrier's rules.

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 an employee of the Carrier for over twenty-two years. In that time, he has a relatively good work record, having received only three five-day overhead suspensions in the mid-1980s. Given that

long seniority, this Board finds that the Carrier did not have just cause and acted arbitrarily when it terminated the Claimant's employment. There is no question that the Claimant engaged in wrongdoing for which he must be punished and he must reimburse the Carrier.

Consequently, this Board orders that the Claimant shall be reinstated to service, but without back pay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension. In addition, this Board orders that the Claimant shall reimburse the Carrier for all monies he wrongfully claimed as travel allowance when he properly stayed at the CLC. The Claimant must also reimburse the Carrier for its CLC charges where the travel allowance was rightfully claimed.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension. In addition, the Claimant shall reimburse the Carrier for all monies he wrongfully claimed as travel allowance when he properly stayed at the CLC. The Claimant must also reimburse the Carrier for its CLC charges where the travel allowance was rightfully claimed. The parties are ordered to review the record to determine the

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exact amount of funds due the Carrier by the Claimant.



PETER R. MEYERS
Neutral Member

Dated: 3/15/04