

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 63

STATEMENT OF CLAIM:

Appeal of the dismissal issued to Claimant R. Jeter, Jr., as a result of investigation held on November 9, 2005, in regards to Claimant's driving a company vehicle without a valid driver's license and conduct unbecoming an employee of CSX.

FINDINGS:

The Claimant was employed by the Carrier as an assistant track foreman at the time of this claim.

On August 28, 2003, the Claimant entered a plea of "guilty" to Count 1 – Trafficking in Drugs (crack cocaine) and Count 2 – Possession of Drugs (crack cocaine) in the Court of Common Pleas, State of Ohio, County of Cuyahoga. Said plea resulted in the suspension of the Claimant's driver's license for three years, among other community control sanctions.

The Carrier first became aware of the Claimant's sentencing on April 8, 2005. On April 22, 2005, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with his driving Carrier vehicles without a valid driver's license, subjecting the Carrier to serious potential liability and/or fines. The Carrier also charged the Claimant with

conduct unbecoming an employee, dishonesty, disloyalty, and having engaged in illegal and/or criminal activity. The Claimant was withheld from service pending the outcome of the investigation.

The hearing was postponed until the Claimant's medical release to return to duty in connection with his Rule G bypass, and the hearing was rescheduled to be conducted on November 9, 2005.

On November 29, 2005, the Carrier notified the Claimant that he had been found guilty of conduct unbecoming an employee and having engaged in illegal and/or criminal activity but that the charges surrounding driving Carrier vehicles without a valid driver's license were not proven. The Carrier further informed the Claimant that being convicted of both trafficking and possession of crack cocaine is unacceptable behavior and would not be tolerated and the Carrier thereby dismissed the Claimant from service effective November 29, 2005.

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 conduct unbecoming an employee in having engaged in illegal or criminal activity. By doing so, the Claimant subjected himself to severe disciplinary action.

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 for over twenty-five years. Given that lengthy seniority, this Board finds that the action taken by the Carrier in terminating his employment was unreasonable, arbitrary, and capricious. Therefore, 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 for the clearly proven wrongful activity in which he engaged. In addition to being reinstated, the Claimant shall be placed back into the Rule G program and shall be subject to random testing for a period of three years from the date of his reinstatement. The Claimant should be made fully aware that any future drug-related activity will most certainly result in his permanent discharge from the Carrier.

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 work shall be considered a lengthy disciplinary suspension. In addition, the Claimant shall be placed back into the Carrier's Rule G program, and he shall be subject to random drug and alcohol testing for a period of three years from the date of his reinstatement. Any further drug- or alcohol-related activity on the part

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of the Claimant shall result in his termination.



PETER R. MEYERS
Neutral Member

Dated: 4-17-06