

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CSX TRANSPORTATION, INC.

Case No. 46

STATEMENT OF CLAIM:

Claim that Mr. T. L. Mason ID # 171748, be reinstated to service and made whole for all lost wages and benefits account being dismissed from service as a result of an investigation which was held on May 18, 1995, at Florence, South Carolina.

FINDINGS:

On May 8, 1995, the Claimant was notified by the Carrier that he was being removed from service pending a formal investigation into his arrest on April 27, 1995, for having a "measurable amount of alcohol" in his system while driving.

The hearing took place on May 18, 1995. It was determined after the hearing that the Claimant was in violation of Rule G when on April 27, 1995, the Claimant was stopped by Columbia City police and administered a breathalyzer which registered a .03 percent. As a result, the Claimant was arrested and placed in the Richmond County Jail. The Carrier considered the Claimant's conduct to be "unbecoming of an employee". On June 7, 1995, the Claimant was notified that he was being dismissed from service.

The Claimant filed his appeal, challenging the Carrier's decision.

The parties being unable to resolve the issue, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case and we find that the Carrier has not presented sufficient proof that the Claimant was guilty of conduct unbecoming an employee on April 27, 1995. There is insufficient evidence that the Claimant had any alcohol on

his breath; although there is some evidence, all of it heresay, that the Claimant was found to have "a measurable amount" of alcohol in his system. More importantly, there was no "conduct" which the Claimant engaged in that can be considered "unbecoming an employee."

The Carrier's Rule G states as follows:

Employees reporting for duty, on duty on Company property or while occupying Company facilities provided by the Company are prohibited from having in their possession, using or being under the influence of alcohol beverages or intoxicants.

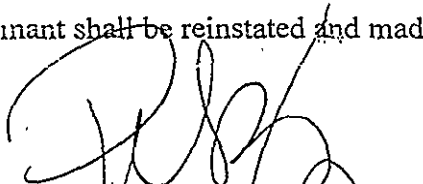
The Claimant in this case was not found in possession of alcohol nor was he found using or under the influence of alcohol. Hence, there was no Rule G violation. With respect to conduct unbecoming an employee, there is simply not enough evidence in the record to support that the Claimant was guilty of that offense.

The Carrier bears the burden of proof in cases of this kind. The Carrier has simply failed to meet any burden of proof that the Claimant was guilty of violating any rule justifying discharge or any other discipline in this case.


For all of the above reasons, this claim must be sustained.

AWARD

Claim sustained. The Claimant shall be reinstated and made whole for all lost backpay and benefits.

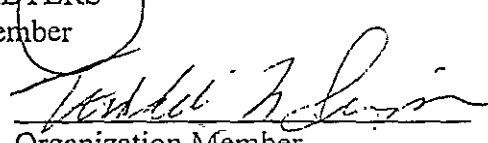


PETER R. MEYERS
Neutral Member



Carrier Member

Dated: 10/25/95



Organization Member

Dated: 11/3/95