

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

Case No. 20

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: CSX Transportation, Inc.

STATEMENT OF CLAIM:

Thirty (30) day suspension assessed to W. B. Sapp,
ID #155890, as a result of investigation held
January 11, 1991, at Tampa, Florida.

FINDINGS:

Claimant W. B. Sapp was employed by the Carrier as a machine operator.

On October 10, 1990, Carrier representative M. L. Dobbs notified the Claimant to appear for a formal investigation in connection with the following charge:

I was advised on October 8, 1990, by Tampa Division Police & Special Services that you appeared before Judge J. G. Ferris - Martin County, Florida Circuit Court, Criminal Division, on September 10, 1990, at which time you were adjudicated guilty of carrying a concealed firearm, this being the result of your arrest by Martin County Sheriff's Department on April 26, 1990, and charging you with grand theft of a firearm and carrying concealed firearm.

As a result of the above you are charged with conduct unbecoming an employee of CSX Transportation.

An investigation into the above charges was held on January 11, 1991, at which time witnesses testified and other evidence was presented. The Claimant was given an opportunity to rebut those charges. On January 22, 1991, the Carrier notified the Claimant that he had been found guilty of all charges and was

being assessed discipline of thirty (30) days' suspension. Thereafter, the Organization filed a claim on Claimant's behalf, challenging his suspension.

This Board has reviewed the evidence and testimony in this case, and we find that there is insufficient evidence to support the finding that the Claimant was guilty of conduct unbecoming an employee when he pleaded nolo contendere to a charge of carrying a concealed weapon in Florida.

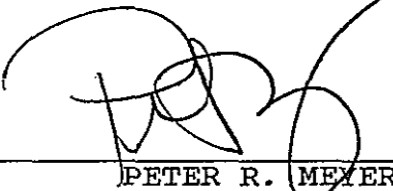
The record reveals that the Claimant, who has been employed by the Carrier for nearly twenty (20) years, owned the firearm in question and had it registered in the State of Georgia. Although he was originally charged with grand theft of a firearm, that charge was dismissed. Thereafter, Claimant pled nolo contendere to the charge of carrying a concealed weapon because it was in a compartment on the seat of his vehicle when he was stopped by the police. It was later determined that the firearm in question belonged to the Claimant and was properly registered in Camden County, Georgia, said registration to expire on March 16, 1995. The license was acquired on March 16, 1990. The incident in question took place on September 10, 1990.

The Carrier bears the burden of proof of showing that a Claimant is guilty of an offense before any discipline can be imposed. Although this Claimant was in technical violation of the Florida law and found guilty, there is no evidence in the record that the Claimant was guilty of conduct unbecoming a Carrier employee. There was no rule violation by the Claimant, and there was not a sufficient evidentiary basis established to

issue discipline to him for conduct unbecoming a railroad employee. Therefore, the claim must be sustained.

AWARD:

Claim sustained. Although the record seems to indicate that the Claimant was off work and never served the suspension, if the Claimant was employed and in service at the time of the thirty (30) day suspension, he shall be made whole for all lost earnings.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

Date: 5/9/91