

**BEFORE PUBLIC LAW BOARD NO. 5896**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
CSX TRANSPORTATION**

**Case No. 193**

**STATEMENT OF CLAIM:**

Appeal of the Carrier's decision to dismiss L.W. Marcum, ID 186882. Mr. Marcum should be reinstated, paid for time lost and have his record cleared of the charges.

**FINDINGS:**

At the time of the events leading to this claim, the Claimant was employed by the Carrier as a maintenance of way employee.

On November 19, 2002, the Carrier conducted a formal investigation of charges that on October 29, 2002, the Claimant allegedly violated Rule G, Safety Rule 21, and applicable FRA and DOT regulations in that the Claimant tested positive on a Company Short Notice follow-up toxicological test. As a result of this investigation, the Claimant was found guilty as charged, and he was dismissed from all service with the Carrier. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's dismissal of the Claimant. The Carrier denied the claim.

The Carrier initially points out that the Claimant previously was charged with conduct unbecoming an employee and violation of Rule G in connection with his July 2001 arrest for driving under the influence, possession of marijuana, and possession of drug paraphernalia. On August 19, 2001, in lieu of holding an investigation on these charges, the Claimant was offered and accepted a Rule G, C-2 option, known as "the

bypass, pursuant to which the Claimant was required to stay drug- and alcohol-free for a five-year period.

The Carrier maintains that on October 29, 2002, the Claimant underwent a Short Notice Follow-Up toxicological test, and the results of the test came back positive for cannabinoids and methamphetamine. The Carrier emphasizes that the Claimant was aware of his obligations under the Bypass Agreement, but he elected to report for work with cannabinoids and methamphetamine in his system.

The Carrier argues that the Claimant was afforded a fair and impartial hearing, and the transcript contained sufficient credible evidence to conclude that the Claimant was guilty as charged. The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization contends that the Claimant has had a long career with the Carrier. Moreover, until recent events, the Claimant had been an exemplary employee. The Organization emphasizes that the Claimant continues to attend regular AA meetings and counseling; the Claimant is making every effort to improve himself.

The Organization points out that the previous Rule G charge was based on an event that occurred away from Railroad property and while the Claimant was off duty. The Organization maintains that the previous offense was dismissed by the court. The Organization asserts that this previous offense should not have been considered a Rule G violation. The instant offense should be considered the Claimant's first offense, and he should be allowed a waiver under the terms of Rule G. The Organization argues that even if this is considered a second offense, the charges against the Claimant are harsh and

excessive.

The parties being unable to resolve their dispute, this matter came 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 a second Rule G violation. The record reveals that the Claimant had previously been offered the Rule G Bypass in August of 2001. In that bypass, he promised to remain alcohol and drug free for a period of five years. In October of 2002, as a result of a random test, the Claimant came up positive for drugs again. The Claimant admitted that he was guilty of the offense.

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.

This Board recognizes that this Claimant has had long service with the Carrier. The record reveals that he has been employed by the Carrier for approximately twenty-nine years prior to this most recent discharge. He has also had no problems with his job performance. However, that is not the issue. The Carrier has a right to know that its workplace will be drug and alcohol free. The Claimant was given his second chance, and he failed to abide by the rules. His failure took place only a little over a year after he was put under the Rule G Bypass agreement. Although this Board is sympathetic to the Claimant, the Carrier has decided that it no longer wants the Claimant employed. This

Board cannot find that the Carrier's position in that regard is unreasonable, arbitrary, or capricious. The Claimant failed to live up to the drug and alcohol rules for a second time, and he failed to meet his obligations under the Rule G Bypass agreement. Therefore, for all of the above reasons, the claim must be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

Dated: 2/28/04