

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 3

STATEMENT OF CLAIM:

Appeal of Claimant G. B. Ballou's dismissal from the service of the Carrier,
effective September 2, 1999

FINDINGS:

Claimant G. B. Ballou was employed by the Carrier as a vehicle operator at the time of the claim.

On October 26, 1998, the Carrier notified the Claimant to appear for a formal investigation to determine his responsibility, if any, in connection with the charges that he failed to follow Carrier instructions given in the medical director's letters of May 19, 1998, and May 29, 1998, in that on October 15, 1998, the Claimant was required to provide a urine and/or breath alcohol test as required by Carrier medical policy and the results of the analysis indicated the presence of cocaine, subjecting the Claimant to dismissal for the use of a prohibited drug.

After several postponements, the hearing commenced on August 24, 1999. On September 2, 1999, the Carrier notified the Claimant that he was found guilty of all charges and was being assessed discipline of dismissal in all capacities effective September 2, 1999.

The Organization filed a claim on behalf of the Claimant challenging the dismissal.

The parties being unable to resolve the issue, 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 failed to comply with the instructions set forth in the medical director's letters of May 19, 1998, and May 29, 1998. The Claimant had tested positive for illicit substances prior to the May letters and was instructed to refrain from any drug use in the future. He subsequently tested positive again in October of 1998. It is clear from the record that the Claimant did not follow the requirements set forth in the medical director's letters after he was reinstated subsequent to the first positive test.

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 action to have been unreasonable, arbitrary, or capricious.

Given the seriousness of the wrongdoing here and the fact that the Claimant failed to stay away from illicit drugs, this Board cannot find that the action taken by the Carrier in dismissing the Claimant's employment was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

11/24/00