

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION

Case No. 13

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant E. A. Johnson as a result of investigation held on January 25, 2001, in connection with Claimant's alleged violation of Carrier Operating Rule G and CSX Safe Way Rule 21.

FINDINGS:

Claimant E. A. Johnson was employed by the Carrier as an equipment operator, trackman, and truck driver at the time of this claim.

On January 2, 2001, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with his having allegedly violated Carrier Transportation Operating Rule G and Safe Way Rule 21 when he tested positive for cannabinoids on December 11, 2000. The Carrier issued this notice because this was the Claimant's second positive toxicological testing result within five years, the first having occurred on or about March 1, 2000. The Claimant was removed from serving pending further administrative action.

After one postponement, the hearing took place on January 25, 2001. On February 9, 2001, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of dismissal from the service of the Carrier.

On February 28, 2001, the Organization filed a claim on behalf of the Claimant, arguing that the chain of custody was compromised. The Carrier denied the claim.

The Carrier argues that the collection and testing procedures involving the Claimant on the date in question were proper and properly documented. The Carrier maintains that it used the Federal Drug Testing Custody and Control Form when it tested the Claimant, which ensures that the procedure is well documented and that the specimen collected is handled appropriately. In addition, the Carrier asserts that the Claimant was properly instructed to report to his headquarters in Akron to be tested at a mobile unit present there even though the mobile unit was dispatched from Cuyahoga Falls, contending that said procedure had no adverse effect on the specimen collected from the Claimant. The Carrier claims that there is no merit to the allegations of mishandling regarding the Claimant's second verified positive test. The Carrier argues that all handling of the specimen followed standard procedure and was documented each step of the way. The Carrier argues that the discipline imposed is consistent with its handling of all similar instances.

The Organization argues that there is some question as to where the Claimant's urine sample was taken on the date in question. The Organization argues that there are no signatures acknowledging the receipt of the Claimant's urine sample at the laboratory. The Organization further claims that there is no documentation in any of the Carrier's exhibits that a laboratory received the Claimant's urine sample and, therefore, that the specimen could have belonged to anyone.

The parties being unable to resolve the issues, 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 in violation of Carrier Rule G when he reported for duty under the influence of cannabinoids for the second time within five years.

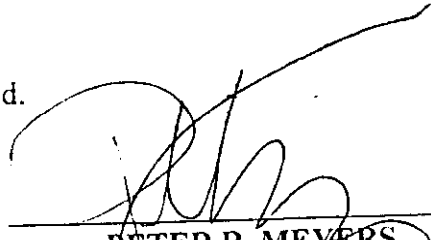
The record reveals that the Claimant underwent toxicological testing on or about March 1, 2000, and was found to be positive for cannabinoids, the metabolites of marijuana. At that time, he was charged with an alleged violation of Rule G. He was subsequently offered the Rule G bypass in lieu of holding an investigation. At that time, the Claimant agreed to become part of the Carrier's EAP program and also recognized that he would be subject to random testing.

The Claimant was then administered toxicological testing again on December 11, 2000. At that time, the Claimant's results again showed a positive for cannabinoids. The Carrier determined that the Claimant was going to be terminated as had been agreed as part of his Rule G bypass.

It is fundamental that the Carrier cannot be required to keep someone in its employ who is unable to remain free of drugs and alcohol. In this case, the Claimant was given a second chance, and he failed to live up to the requirements of the program. Therefore, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Consequently, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member