

BEFORE PUBLIC LAW BOARD NO. 6239

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**And**

**CSX TRANSPORTATION**

Case No. 17

**STATEMENT OF CLAIM:**

Appeal of dismissal of Claimant T. G. Colvin as a result of investigation held on March 19, 2001, in connection with Claimant's alleged violation of Carrier Rule G, Safety Rule 21, and applicable FRA and DOT regulations when he tested positive a second time for a prohibited substance.

**FINDINGS:**

Claimant T. G. Colvin was employed by the Carrier as a bridge mechanic at the time of this claim.

On March 6, 2001, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with his having violated Rule G, Safety Rule 21, and applicable FRA and DOT regulations in that on February 22, 2001, he tested positive for a prohibited substance on a FHWA follow-up toxicological test. The Carrier informed the Claimant that this incident was his second verified positive toxicological testing result within five years. The Claimant was removed from service pending further administrative action.

The hearing took place on March 19, 2001. On March 30, 2001, the Carrier

notified the Claimant that he had been found guilty as charged and was being issued discipline of dismissal from all service with the Carrier.

On April 6, 2001, the Organization filed a claim on behalf of the Claimant arguing that the discipline assessed was harsh and excessive and that the Claimant be returned to service. The Carrier denied the claim.

The Carrier argues that there is nothing that would justify changing the Carrier's decision in this case. The Carrier maintains that the transcript proves that the Claimant was afforded a fair and impartial hearing and that there are no mitigating circumstances or reasons to consider leniency in this case. The Carrier argues that its policy is that employees who test positive for a prohibited substance twice within five years will be dismissed. The Carrier contends that the Claimant understood that when he signed the Rule G Waiver and he must now accept the consequences. The Carrier asserts that this policy is consistently applied and the Claimant's dismissal was neither harsh nor excessive.

The Organization argues that the Claimant accepted full responsibility for his actions and admitted to his disabling addiction. However, the Organization maintains that the Claimant did not receive proper counseling from his first EAP counselor after his first Rule G infraction in 1996 and had he received the proper counseling and instruction, he would have remained free of his addiction. The Organization asserts that mitigating circumstances in this case warrant a thorough review and evaluation. The Organization

argues that the Claimant obtained counseling with a private professional and has completed his current rehabilitation with a favorable recommendation from his current EAP counselor.

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 guilty of a second Rule G violation on February 22, 2001.

The record reveals that the Claimant was found to have an illegal substance in his system while at work in October 22, 1996. At that time, he was formally charged with a violation of Rule G, but signed the Rule G waiver, which constituted his acceptance of the Rule G bypass. In that agreement, he agreed that any reported non-compliance with his after-care plan within five years of his return to service would result in a hearing on the Rule G charge. At the hearing, the Claimant identified the Rule G bypass agreement dated November 4, 1996. At the hearing on the second test, the Claimant did not challenge the toxicological testing result that was positive for cannabinoids.

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.

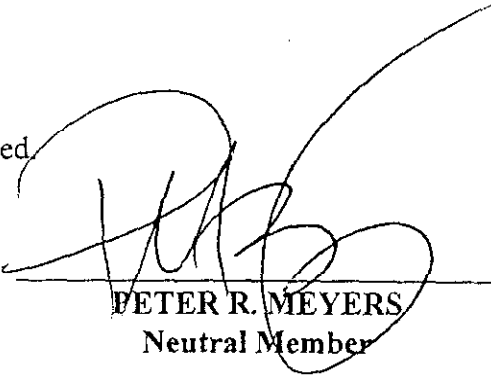
This was the second time that the Claimant tested positive for marijuana within

the five-year period. He had previously been given a second chance and a Rule G bypass agreement. He failed to live up to the terms of that Rule G bypass agreement and now subjects himself to discharge.

This Board cannot find that the action taken by the Carrier in terminating this two-time offender was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

**AWARD:**

The claim is denied.



PETER R. MEYERS  
Neutral Member