

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION

Case No. 18

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant D. D. Deville as a result of investigation held on September 6, 2001, in connection with Claimant's alleged failure to comply with conditions of Rule G. Waiver.

FINDINGS:

Claimant D. D. Deville was employed by the Carrier as a track foreman at the time of this claim.

On June 25, 2001, the Carrier notified the Claimant that he was being charged with violating Rule G and/or Safety Rule 21 and/or FRA regulations (49 CFR Part 219.102) as a result of his having tested positive for cocaine metabolites on June 12, 2001. The Claimant was instructed to either attend a hearing or sign a Rule G, C-2 option bypass in accordance with the parties' agreement. The Claimant decided to sign the option bypass on July 8, 2001, agreeing to contact an Employee Assistance Program (EAP) counselor within five days of the date of the charge notice and enroll and participate in an approved rehabilitation program. However, because the Claimant failed to contact a counselor and participate in the Employee Assistance Program, the Carrier issued another charge notice dated August 3, 2001. The Carrier charged the Claimant with failing to comply with the requirements of the Rule G, C-2 option bypass.

After one postponement, the hearing took place on September 6, 2001. On

September 25, 2001, the Carrier notified the Claimant that he was being dismissed from the service of the Carrier effective that date.

The Organization filed a claim on behalf of the Claimant, requesting that the Claimant's dismissal be overturned and that he be allowed to enroll in the Rule G program. The Carrier denied the claim.

The Carrier argues that the Claimant, after agreeing to comply with the terms of his Rule G bypass, failed to contact an EAP counselor for over two months. The Carrier argues that the Claimant's contention that he did not know who to contact or how is without merit because the terms of his bypass agreement indicate that it was the Claimant's responsibility to make contact with an EAP counselor. The Carrier argues that the Claimant agreed to the terms of the bypass and that it was what he chose to do in order to keep his job. The Carrier points out that the Claimant did not contact anyone at the Carrier's offices who might have given him a name and a number. The Carrier asserts that the Claimant simply did not care about complying with the bypass agreement. The Carrier maintains that if the Claimant was truly willing to go into treatment, he would have made an attempt to do so. The Carrier contends that, considering the Claimant's prior discipline record, there is no good reason for the Carrier to continue to retain the Claimant in its service. The Carrier argues that the Claimant had his chance and is not entitled to another one. The Carrier argues that the claim should be denied.

The Organization argues that the Claimant was ready to comply with the Rule G bypass after testing positive for cocaine, but he was not given proper advice from the Carrier on how to comply. The Organization maintains that the form that was sent to the

Claimant contained no telephone numbers to contact a counselor to set up sessions and, considering that the Claimant was off work for over three years, the Claimant was not familiar with the rehabilitation procedures. The Organization also points out that after the investigation in this case, a new form which includes relevant phone numbers is being used to notify employees as to how to contact a counselor for the Rule G program. The Organization claims that it is ironic that this procedural change would come after charging the Claimant with not contacting a counselor within five days. The Organization maintains that if the Claimant had been afforded the new form, he would have notified a counselor. The Organization claims that the Claimant did not get a fair opportunity to enter the Rule G program because the Carrier form was vague and uninformative. The Organization requests that the claim be sustained.

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 to support the finding that the Claimant was guilty of failing to comply with the Rule G bypass agreement that he signed after he was formally charged with the Rule G violation. In that agreement, the Claimant agreed that he would contact one of the Carrier's Employee Assistance Program (EAP) counselors within five days of the date of the charge notice and would indicate a willingness to immediately enroll and participate in an approved rehabilitation program. The record is clear that the Claimant did not contact the EAP counselor within the required period of time. The Claimant admitted that he had tested positive for cocaine in June of 2001 and he had signed the Rule G bypass agreement on July 8, 2001. The Claimant also admitted that he had never

contacted the EAP for counseling as he had agreed to in the Rule G bypass agreement.

The record also reflects that the Claimant had previously been dismissed for insubordination in 1986, but was reinstated in 1988.

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 previous disciplinary history of the Claimant and the seriousness of the offense here, and the failure of the Claimant to comply with the very simple provisions of the Rule G bypass agreement which extended him a second chance, this Board cannot find that the Carrier acted arbitrarily, unreasonably, or capriciously when it terminated the Claimant's employment. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 4/22/02