

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION

Case No. 19

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant M. J. Morris as a result of investigation held on December 20, 2001, in connection with Claimant's alleged violation of Rule G and Safety Rule 21.

FINDINGS:

Claimant M. J. Morris was employed by the Carrier as a bridge foreman at the time of this claim.

On May 22, 2001, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with a violation of Rule G and Safety Rule 21 when the Claimant tested positive for cannabinoids after submitting to a toxicological test on May 10, 2001. The Carrier informed the Claimant that this was his second verified positive toxicological test result within the past five years and that he was being withheld from service pending the investigation.

The hearing was postponed until December 20, 2001. On January 3, 2002, the Carrier notified the Claimant that he had been found guilty of all charges and was being issued discipline of dismissal effective that date.

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

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 for testing positive for cannabinoids. The record reflects that the Claimant was properly given a random test because he had signed a previous Rule G waiver. The Claimant admits that the Carrier had a right to send him for the test. Moreover, the Claimant admits that the test was positive and he was notified of that result by the Carrier's medical department. The Claimant also admitted that this was his second Rule G violation as he had previously signed a Rule G waiver for another similar instance of wrongdoing on his part.

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 Board recognizes that this Claimant has been employed by the Carrier for a very long time. However, as we have stated in the past, the Carrier cannot be required to keep in its employ employees who cannot stay away from drugs and keep drugs out of their system while they are at work. This Claimant had previously been given another chance, and he failed to live up to his promise. Despite the fact that he has a great deal of seniority, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 3/6/08