

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 2

STATEMENT OF CLAIM:

Appeal of Claimant R. M. Coberly's dismissal from the service of the Carrier, effective June 10, 1999.

FINDINGS:

Claimant R. M. Coberly was employed by the Carrier as a backhoe operator at the time of the claim.

On May 4, 1999, the Carrier notified the Claimant to appear for a formal investigation in connection with his leaving work after being instructed to participate in a drug test at the Vincennes, Indiana, depot on April 27, 1999, at approximately 0740 hours. The Claimant was charged with abandoning his job, being absent without permission, insubordination in that he refused to undergo a random toxicological test, and failure to abide by the requirements of his Rule G by-pass treatment plan agreement.

After one postponement, the hearing took place on May 19, 1999. The Claimant was found guilty of the charge and assessed the discipline of dismissal from the service of the Carrier effective June 10, 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 record and testimony in this case, and we find that the

Claimant was properly found guilty of abandoning his job and then failing to undergo a required random toxicological test. He was also properly found guilty of failing to abide by the requirements of his Rule G by-pass treatment plan agreement.

The record reveals that on April 27, 1999, the Claimant and several of his fellow employees were told at the beginning of the day that they were to participate in a random drug and alcohol test. The other employees submitted to the test, and the Claimant left his job that morning. The Claimant admits that he left after he was made aware that he had to take a drug test that day. This Board finds that the Carrier properly found the Claimant's actions in this case to have been a refusal to take the required 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.

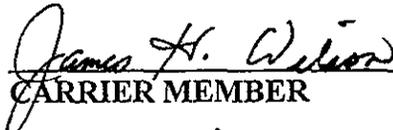
In this case, the record reveals that the Claimant had previously been placed on a Rule G waiver in July of 1995. He promised to remain drug free and to cooperate with all testing. In this case, the Claimant obviously did not cooperate with the required testing. Consequently, this Board has no choice but to find that the Carrier acted within its rights when it terminated the Claimant's employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER
Dated: 9/10/99



ORGANIZATION MEMBER
Dated: 10.12.99