

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION

Case No. 20

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant R. C. Nesbitt as a result of investigation held on December 11, 2001, in connection with Claimant's alleged violation of Rule G and Safety Rule 21.

FINDINGS:

Claimant R. C. Nesbitt was employed by the Carrier as a welder at the time of this claim.

On November 9, 2001, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with his failure to comply with the requirements of Rule G, C-2 option bypass letter signed by the Claimant, specifically Item D. The Carrier informed the Claimant that as a result of a follow-up test on October 26, 2001, which returned a positive toxicological test result for cannabinoids, he was being charged with a violation of Rule G and Safety Rule 21. The Claimant was withheld from service pending the investigation.

After one postponement, the hearing took place on December 11, 2001. On December 21, 2001, 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 tested positive for cannabinoids for a second time and was again guilty of a Rule G violation. The record reveals that this Claimant signed a Rule G bypass on May 1, 2000, and, at that time, stated that he would make himself eligible for random testing over the next five years. The record reveals that in a follow-up test on October 26, 2001, the Claimant again tested positive for cannabinoids. Despite the fact that the Claimant has made a lengthy defense that he ingested food that may have had similar chemicals to cannabis which led to a false positive, this Board is simply not convinced. The extraordinarily lengthy record that has been presented to the Board makes it clear that the Claimant's rights were protected and the hearing met all of the due process requirements.

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 seriousness of this offense and the fact that the Claimant is apparently unable to stay away from drugs, this Board cannot find that the Carrier's action in terminating his employment was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 3/14/02