

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION

Case No. 22

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant B. Yancy, Jr., as a result of investigation held on August 27, 2001, in connection with Claimant's alleged violation of Rule G, Safety Rule 21, and applicable FRA and DOT regulations.

FINDINGS:

¹
Claimant B. Yancy, Jr., was employed by the Carrier as a machine operator at the time of this claim.

On August 14, 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, Safety Rule 21, and applicable FRA and DOT regulations in that on August 7, 2001, the Claimant tested positive for a prohibited substance on an FRA Short Notice Follow-Up toxicological test. The Carrier notified the Claimant that this was his second verified positive test result within five years.

The hearing took place on August 27, 2001. On September 6, 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 was guilty of a second Rule G violation by testing positive for a prohibited substance in August of 2001. The record reveals that the Claimant had previously tested positive for marijuana in 1997 and opted to sign a Rule G waiver, which held his discipline in abeyance. As part of that waiver, the Claimant agreed to make himself available for follow-up testing over the next five years. One of those follow-up tests took place on August 7, 2001. At that follow-up test, the Claimant was found to have cannabinoids in his system, which is one of the prohibited substances. Therefore, this Board finds that the Claimant was properly found guilty of violating his Rule G waiver.

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.

The rules clearly prohibit being on duty with drugs or alcohol in one's system that would affect alertness, coordination, and reaction time. The Claimant agreed that he would keep those substances out of his system and would be available for follow-up tests. He also agreed that if he violated any of the rules, he would subject himself to termination. The Claimant was found to be guilty of a second Rule G violation, which was also a violation of FRA regulations (49 CFR 219.102). Given that this was the second Rule G violation within five years, this Board cannot find that the Carrier acted unreasonably, arbitrarily, 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: 3/3/02