

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 27

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant A. S. Lyons as a result of investigation held on November 6, 2002, in regards to Claimant's alleged insubordination, conduct unbecoming a Carrier employee, violation of CSX Transportation Operating Rule G, and violation of the CSX Safe Way Rule 21 on September 30, 2002.

FINDINGS:

The Claimant was employed by the Carrier as a machine operator at the time of this claim.

On October 15, 2002, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and the Claimant's responsibility, if any, in connection with the results of the Claimant's toxicological test that took place on September 30, 2002. The results revealed that the specimen provided by the Claimant was uncharacteristic of human urine. The Carrier charged the Claimant with insubordination in that he refused to provide an adequate urine specimen for toxicological testing, conduct unbecoming a Carrier employee, violation of Carrier Operating Rule G, and violation of Carrier Safe Way Rule 21. The Carrier withheld the Claimant from service pending the investigation.

After one postponement, the hearing took place on November 4, 2002. On November 13, 2002, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of dismissal from all service with the Carrier, including the removal of his name from all seniority rosters, effective that date.

The parties being unable to resolve their dispute, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has proven that the Claimant provided an altered specimen when he underwent toxicological testing on September 30, 2002. The Claimant stated the following during the hearing:

So now when I gets to work September 30th, stated there they drug test me and I altered, I knew I was dirty from the week prior, so I altered the test with water as soon as I'd done that half and hour 40 minutes later . . . That's what I done and I hope to God the Company give me some type of leniency . . . I will never, never do this again.

Consequently, this Board must find that the Carrier has proven with sufficient evidence that the Claimant violated the rule that employees comply with Company drug and alcohol testing on September 30, 2002.

The record further reveals that the Claimant underwent toxicological testing on April 5, 2002, and his test turned up positive for cannabinoids. At that time, the Claimant was given an option of a Rule G waiver or bypass. The Claimant accepted that option and agreed to contact the Employee Assistance Program (EAP) and he further agreed that any reported non-compliance with his after-care plan within five years would result in a hearing on the Rule G/Safety Rule 21 charge.

The Claimant signed the Rule G waiver on April 29, 2002.

Consequently, this drug-related wrongdoing on September 30, 2002, was a clear violation of the Rule G waiver.

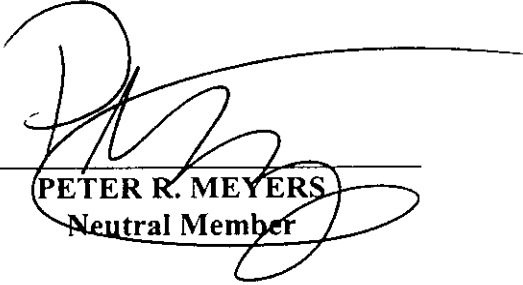
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been

unreasonable, arbitrary, or capricious.

The Claimant in this case is a two-time violator of the Carrier's drug and alcohol rules. Consequently, 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: 3/21/03