

**BEFORE PUBLIC LAW BOARD NO. 6239**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION**

**Case No. 43**

**STATEMENT OF CLAIM:**

Appeal of the dismissal issued to Claimant J. C. Burns as a result of investigation held on September 17, 2003, in regards to Claimant's noncompliance with the conditions of the Employee Assistance Program (EAP), insubordination, and violation of Carrier Operating Rule G.

**FINDINGS:**

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

On August 14, 2003, the Carrier directed the Claimant to participate in an interim breath alcohol and urine drug screening as required by the conditions of the Employee Assistance Program in which the Claimant was enrolled. The Claimant completed the breath toxicological test, which resulted in a positive breath alcohol level of .085 gms/210 liters, but the Claimant left the testing site before providing a urine drug specimen.

On September 9, 2003, the Carrier issued a formal notice informing the Claimant to appear for a formal investigation into the matter and charging the Claimant with noncompliance with the conditions of the Employee Assistance Program (EAP), insubordination, and violation of Carrier Operating Rule G. The

Claimant was withheld from service pending the results of the formal investigation.

After one postponement, the hearing took place on September 17, 2003. On October 6, 2003, the Carrier notified the Claimant that he had been found guilty of all charges and was being dismissed from the service of the Carrier.

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 there is sufficient evidence in the record to support the finding that the Claimant was guilty of being insubordinate and violating Operating Rule G when he failed to comply with the order to participate in an interim breath alcohol and urine drug screen test as a participant in the Employee Assistance Program. The record revealed that the Claimant did take the breath test and scored at a level of .085 of alcohol in his blood. The record also indicates that the Claimant did not take the urine test and left the premises after being ordered to remain on the premises to take said test. The Claimant apparently told the tester that he "had to pee and that he could not wait" and then he left the premises. He did not return to take his urine 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 actions to have been unreasonable, arbitrary, or

capricious.

This Board has stated on numerous occasions that it is absolutely essential for employees to comply with the rules prohibiting drug and alcohol on the premises. Moreover, employees must comply with the testing rules of the Carrier. In this case, the Claimant failed to comply with the testing rules. In addition, the Claimant did blow into a breathalyzer, which showed that he had alcohol on his breath while he was at work on the date in question.

This Claimant had previously been involved in the drug and alcohol program several years before because he had come up positive for THC on a return-to-work physical. The Claimant had already been given an opportunity to reform his behavior by the Carrier and he failed. Therefore, this Board cannot find that the action taken by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.

  

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**PETER R. MEYERS**  
Neutral Member

Dated: 3/3/04