

PUBLIC LAW BOARD NO. 6384

PARTIES TO THE DISPUTE:

CSX TRANSPORTATION, INC.

- and -

BROTHERHOOD OF RAILROAD SIGNALMEN

STATEMENT OF CLAIM:

Mr. Shaffer was as stated above taken out of service on July 16, 2001, he has not been placed back into service by CSXT. On August 21, 2001 he received the attached letter dated August 14, 2001. Mr. Shaffer has complied with CSXT and the EAP program. Mr. Shaffer has been withheld from service without a fair and impartial hearing, he must be returned to service and compensated for all lost wages and other compensation due him.

OPINION OF BOARD: Claimant E. F. Shaffer, III (ID 320474) began his employment with CSXT on August 1, 1991. In November 1995, he was dismissed on a charge of improper use of a Corporate Lodging Card while off duty on October 12 and 17-19, 1995. His discharge was subsequently appealed the National Railroad Adjustment Board which modified the discharge penalty in Third Division Award No. 32568, as follows:

... the Board will provide the Claimant with an opportunity to prove himself a worthwhile employee to the Carrier. Given the unique circumstances of this case such opportunity shall be granted on a final chance basis.

The Claimant shall be reinstated with seniority unimpaired, but with no backpay for time held out of service. He shall take the required physical examination upon his return to work and he shall participate in the Carrier's Employee Assistance Program. The Claimant shall participate in the latter for a period of five years, commencing with the date Claimant returns to work. During the five year EAP period the Claimant shall be considered a probationary employee and shall be subject to random drug and alcohol testing at times chosen by the Carrier. If the Claimant refuses to take drug or alcohol tests as requested, or tests positive on such tests, such will be grounds for automatic permanent dismissal without necessity of a formal investigation.

Upon his return to service, Claimant signed on for the CSXT Substance Abuse Treatment Plan dated June 2, 2000. Among other items, the program required the Claimant to be subject to short-notice drug testing and to meet with EAP or a designee upon request. Also, Claimant entered

into the following commitment as a condition of his reinstatement

Properly addressing a substance abuse issue is of paramount concern in the safe discharge of company related duties. I understand that failure to comply with any or all of the treatment recommendations may be grounds for disqualification by the Chief Medical Officer and, in some circumstances, may require release of this document to supervision for the purposes of disciplinary action

I understand this contract will remain in effect for 5 years from date signed and I agree to release a copy to the Chief Medical Officer, CSX Transportation.

A urine specimen Claimant provided on June 26, 2001, tested positive for cocaine metabolites, following which he admitted to General Manager Signal Construction, R. A. Klein, that he had been drinking at a party which "led to other things." The results of that test subsequently were quashed by the CSXT Medical Review Officer because, when Claimant requested that the specimen be re-tested by another laboratory, it was discovered that the original sample had not been collected as a split specimen. Nonetheless, in accordance with his Substance Abuse Treatment Plan, Claimant was directed to participate in a three-day inpatient evaluation for chemical dependency at the Cornerstone of Recovery, Incorporated, a treatment facility. However, Claimant was expelled from that facility because of his menacing behavior towards the doctors and staff, including threats of physical harm to EAP Director, D. C. Bowen.


By letter of August 14, 2001, Claimant was notified by General Manager Signal Construction Mein that his employment was terminated, as follows:

As a result of your recent failure to participate in the Carrier Employee Assistance Program as outlined in the reinstatement award, you have failed to comply with the conditions set forth in Award No. 32568, Docket No. SG-35504 rendered by the 17th Division of the National Railroad Adjustment Board. Accordingly, your employment with CSXT is terminated in all capacities effective immediately.

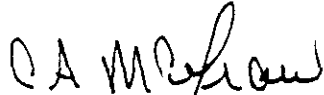
A careful review of the record evidence leaves this Board persuaded that Claimant's termination of employment was self-inflicted under the terms of the conditional probationary reinstatement which he was awarded by the NRAB Third Division in Award 32568. He was given his final opportunity to prove himself a worthwhile employee to the Carrier but was unable or unwilling to comply with the mandatory conditions attached to that last chance reinstatement. Nothing in this record warrants any further intervention by this Board.

AWARD

Claim denied.

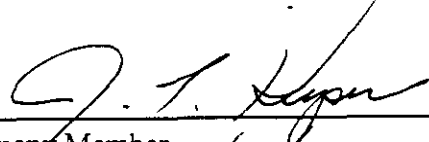


Nancy Faircloth Eischen, Chair



Union Member

Dated: March 14, 2003



Company Member

Dated: 3/14/03