

PUBLIC LAW BOARD NO. 6384

AWARD NO. 16
NMB CASE NO. 16
UNION CASE NO. 12202
COMPANY CASE NO. 15(01-0183)

PARTIES TO THE DISPUTE:

CSX TRANSPORTATION, INC.
[former Baltimore & Ohio Railroad]

- and -

BROTHERHOOD OF RAILROAD SIGNALMEN

STATEMENT OF CLAIM:

Claim on behalf of T.O. Camp, ID 596134. The discipline assessed on September 13, 2001, is excessive, improper, impartial and out of line.

OPINION OF BOARD:

T.O. Camp (Claimant) commenced employment with CSXT in September, 1979. On March 29, 1999, Claimant underwent toxicological testing, the results of which were positive for cannabinoids. As a result, Claimant was charged with violating Rule G and/or Safety Rule 21 and FRA regulations (40CFR Part 219). In lieu of disciplinary route, on April 6, 1999 Claimant opted to enter Carrier's Substance Abuse Program and upon completing same, was released to return to service on June 4, 1999.

Thereafter, on June 28, 2001, Claimant was selected for short notice testing, and for a second time, tested positive for cannabinoids. By Notice dated July 17, 2001, Claimant was charged with violating Rule G/Safety Rule 21 and directed to

attend an August 14, 2001 hearing regarding same. Carrier also included the original charges as set forth in the April 6, 1999 Notice.

The hearing was held as scheduled, and by letter dated September 13, 2001, Claimant was informed that he had been found guilty as charged and was dismissed from service.

The Organization appealed Carrier's decision, alleging that Carrier's EAP did not "do its job". The General Chairman further alleged that Claimant did not receive the "proper or correct treatment" and that Mr. Camp "fell through a crack in the system." With respect to Claimant's discharge, the General Chairman contended that the discipline was "excessive, improper, impartial and out of line."

Carrier denied the claim, maintaining that:

"It is clear that the Appellant is responsible for his own actions. It is not the Carrier's responsibility to ensure that every employee successfully completes the EAP program. The burden again rests with the employee.

Regarding Claimant's discharge, Carrier asserted:

"At the outset, the Carrier's review of the record clearly proves the Appellant was guilty of violating the Rule G bypass he agreed to after testing positive for cannobinoids in March 1999. The Appellant again tested positive for cannobinoids on June 28, 2001 as well as his initial positive test in March of 1999."

On April 6, 1999, shortly after Mr. Camp was charged with a Rule G/Safety Rule 21 violation, he agreed to the following:

"I will contact one of the Carrier's Employee Assistance (EAP) Counselors within five (5) days of the date the Charge Notice was received and will indicate a willingness to immediately enroll and participate in an

approved rehabilitation program, with the understanding that:

- a. The hearing on the Rule G/Safety Rule 21 charge will be held in abeyance,
- b. I will continue to remain out of service until the appropriate supervisor approves my return to service.
- c. I will be carried on the Carrier's records as being off due to a 'disability', and,
- d. Any reported non-compliance with my after-care plan within five (5) years of my return to service will result in a hearing on the Rule G/Safety Rule 21 charge.

Claimant successfully completed the EAP and was returned to service on June 4, 1999. Approximately twenty-four (24) months later, Claimant again tested positive for cannobinoids. The record evidence demonstrates that results of Claimant's June 28, 2001 drug test were conclusive, and therefore, there can be no dispute that Claimant's urine sample tested positive, for a second time, for cannobinoids.

Finally, in Claimant's defense, the Organization asserts that Mr. Camp should be afforded another chance because, "he did not receive the proper or correct treatment." However, that argument is disingenuous in light of Claimant's own testimony in which he admitted that he was "less than honest" when he underwent the medical evaluation for his drug abuse while in the recovery program. Specifically, Claimant stated that:

- Q. In conjunction with the April 5th notice of positive test, you were charged with violation of Rule G at that time, and were you in fact in violation of Rule G but given the opportunity to take the option?
- A. That's correct.
- Q. And now you've been tested positive again on June 28th, FRA Short Notice Follow-Up Test,

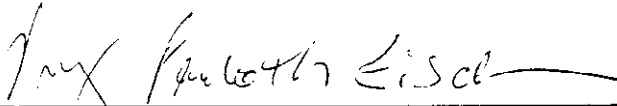
and you've been determined to be, have tested positive and in violation of Rule G, again as a second offense. As a result of that positive test, are you in fact in violation of Rule G Second offense?

A. Correct, yes I am.

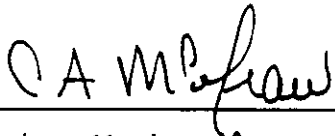
In the circumstances, it is clear that Claimant simply failed to abide by the terms of his substance abuse treatment program. Carrier's decision to discharge Claimant was premised upon substantial record evidence and testimony, including Claimant's admission of guilt. Therefore, this claim must be denied.

AWARD

Claim denied.

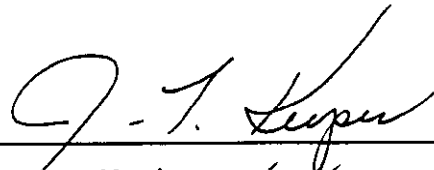


Nancy Faircloth Eischen, Chair



Union Member

Dated: March 14, 2003



Company Member

Dated: 3/14/03