

PUBLIC LAW BOARD NO. 6384

AWARD NO. 17
NMB CASE NO. 17
UNION CASE NO. 12182
COMPANY CASE NO. 15(01-0153)

PARTIES TO THE DISPUTE:

CSX TRANSPORTATION, INC.
[former Chesapeake & Ohio Railway]

- and -

BROTHERHOOD OF RAILROAD SIGNALMEN

STATEMENT OF CLAIM:

Claim on behalf of K.G. McComas, for reinstatement to his former position, account Carrier violated the current Signalmen's Agreement, particularly Rule 55, when it issued the harsh and excessive discipline of dismissal against the Claimant and failed to provide him with a fair and impartial investigation which was held on September 12, 2001. Carrier's File No. 15(010153). General Chairman's File No. 01-75-CD. BRS File Case No. 12182-C&O.

OPINION OF BOARD:

K.G. McComas (Claimant) has been employed by Carrier since September, 1974. On January 8, 2001 Claimant underwent FRA random toxicological testing, the results of which were positive for breath alcohol. Claimant was charged with violation of Rule G, Safety Rule 21, and FRA regulations (40CFR Part 219), however, Claimant, who was given the option, elected to enter Carrier's substance abuse treatment program. Thereafter, Mr. McComas completed the Program, and was qualified to return to service on February 12, 2001.

On August 17, 2001, Claimant was selected and underwent short notice testing, after which Carrier's Chief Medical Review Officer informed General Manager Signal Maintenance Mabe, that Claimant had again tested positive for breath alcohol. By letter dated August 22, 2001, Claimant was charged with violation of Rule G/Safety Rule 21, and following the hearing, on September 24, 2001 Claimant informed that he had been found guilty as charged, was dismissed from service.

In a September 26, 2001 appeal, the Organization did not deny Claimant's guilt, but asserted that Claimant should be afforded another chance because he did not receive "proper" medical treatment. The General Chairman further appealed Carrier's decision premised upon "mitigating circumstances" and Claimant's "long unblemished service history."

Carrier denied the claim, maintaining that: "All of Carrier's actions were based upon Claimant's second failure to provide a negative breathalyzer test for alcohol in less than seven months from his first test." Carrier noted that Claimant admitted that he had been "drinking beer" when he was tested on August 17, 2001. Finally, with respect to the assertion that Claimant did not receive proper medical treatment, Carrier noted that Claimant did not seek additional medical treatment prior to the August 17, 1001 (second) test date, and went on to note that: "There is no evidence to suggest that the use of an inpatient treatment program would have prevented Claimant's

relapse."

On January 12, 2001, after testing positive for breath alcohol, Claimant signed 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 February 12, 2001. Some seven months later, on August 17, 2001, Claimant tested positive for breath alcohol, for a second time. The Organization argues that Claimant should be given "another chance" due to "mitigating circumstances" and Claimant's heretofore unblemished record. However, in the circumstances, we do not concur.

The record plainly established Claimant's alcohol usage on at least two (2) occasions. Such usage is in clear violation of both Carrier's and FRA's policies and rules. Claimant was fully aware of his responsibility to work alcohol-free, and he was simply unable or unwilling to do so. The record evidence supports Carrier's findings, and the discipline assessed was

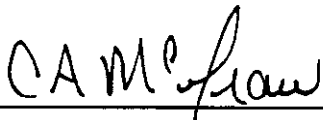
reasonable in the circumstances.

AWARD

Claim denied.

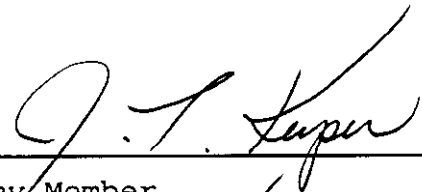


Nancy Faircloth Eischen, Chair



Union Member

Dated: March 14, 2003



Company Member

Dated: 3/14/03