

PUBLIC LAW BOARD NO. 6461

Case No. 8

Award No. 8

PARTIES

Brotherhood of Maintenance of Way Employees

To

- and -

DISPUTE:

Grand Trunk Western Railway

STATEMENT OF CLAIM:

Appeal of the discipline of dismissal imposed
on Mark Reforno, effective March 4, 2002.

FINDINGS: On January 25, 2002, claimant was given a notice charging him with the following offense:

"Violation of Rule G.

The above charge is in connection with an investigation held
on January 7, 2002 wherein you stated you smoked marijuana
on October 31, 2001 at a local bar in Hamtramck, Michigan."

By way of background, on October 9, 1998, claimant was dismissed for drug use (marijuana). Subsequently he entered and successfully completed a rehabilitation program and was conditionally reinstated to service on a leniency basis effective May 5, 1999. As a result of an incident that occurred on October 31, 2001, claimant was charged with operating a track machine in an unsafe manner and was required to attend a hearing held on January 7, 2002. Due to the 10/31/2001 incident, claimant was required to take a drug and alcohol test for which he tested positive for use of marijuana. The record shows the Carrier did not charge him with regard to the positive test. However, at his January 7, 2002 hearing, the claimant freely admitted that he used marijuana on October 31, 2001, and based on said admission, the claimant was subsequently charged as set forth hereinabove.

The Carrier asserts that claimant was fully aware of the fact that he was given a second chance to be a reliable employee and knew that under the Carrier's Drug and Alcohol policy that

he was to remain free from prohibitive drug use. They point to the undisputed fact that claimant freely admitted at the January 7, 2002 hearing, that he used marijuana and was therefore in violation of Rule G. Consequently, based on the undisputed testimony and evidence presented, and in light of his previous discharge/leniency reinstatement, the discipline of dismissal should not be disturbed.

The Organization asserts the claimant was subjected to "double jeopardy" in this case, which denied him due process. They state that the Rule G charge was made nearly three months after the Carrier's knowledge of the claimant's positive drug test, which they contend is a time limit violation of Rule 25, Section 1(d). Based on the foregoing, they aver that his record should be cleared and that he should be compensated for all lost wages.

We have thoroughly reviewed the procedural arguments advanced by the Organization and we disagree with them. The charge hereinbefore us were timely made based on the testimony adduced at the January 7, 2002 hearing. Further, from our review of the record, we found no improprieties and deem the claimant was afforded a fair and impartial hearing.

The pertinent portion of Rule G applicable to this case is quoted as follows:


"The use or possession of intoxicants, over-the-counter or prescription drugs, narcotics, controlled substances, or medication that may adversely affect safe performance is prohibited while on duty or on company property. Employees must not possess, sell, use, or have in their bodily fluids any illegal drug or controlled substance while on or off duty."

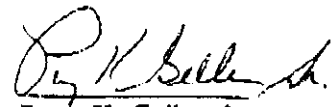
The record in this case is abundantly clear that claimant violated the above quoted rule. He was previously given one "last chance" to become a reliable and drug free employee and knew at the outset what was expected from him to continue his employment. His choice to continue to use prohibited drugs was his alone and, he was fully aware of the consequences for his

non-compliance with Carrier's Drug and Alcohol Policy. Therefore, given the clear and undisputed statement that he used prohibited drugs and failed to comply with instructions and abide by the terms he had previously agreed to, we find no proper basis to disturb the Carrier's decision in this case.

AWARD: The claim is denied.


Marilyn J. Kovacs
Carrier Member


Francis J. Domzalski
Neutral Member


Perry K. Geller, Sr.
Organization Member

Dated: 9-23-02