

**PUBLIC LAW BOARD NO. 6564**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**And**

**CSX TRANSPORTATION, INC.**

**Case No. 11**

**Statement of Claim:** Claim of the System Committee of the Brotherhood that:

1. The dismissal of Trackman H. R. Garrison, Jr. for his responsibility in connection with an accident in a Company vehicle on January 28, 2001 and subsequent related events through 2001 and 2002 without just and sufficient cause and excessive punishment.
2. Trackman H. R. Garrison, Jr. shall now be reinstated to service with seniority and all other rights unimpaired, compensated for all wage loss suffered and have his record cleared of the incident.

**Facts**

Claimant was hired by the Carrier on August 13, 1973. On February 9, 2001, he was charged with violation of CSXT Operating Rule 21 (commonly referred to as Rule G). While Claimant was under the influence of alcohol, he caused a fatal highway accident with a company vehicle, which resulted in the death of Mr. W.C. Acosta. He was granted probation by the State of Alabama through subsequent legal proceedings.

Rather than pursue a disciplinary appeal, Claimant entered the Carrier's substance abuse program. He received treatment and was absent from work for a nine-month period until October 8, 2001. In order to remain in the substance abuse treatment program, Claimant agreed, among other things, to refrain from using alcohol and drugs.

Despite this agreement, on July 26, 2002, it was determined in the Circuit Court for the State of Alabama, Houston County, that Claimant had failed a drug screen, in violation of his probation arrangement. Claimant had tested positive for cocaine, and he was sentenced to thirty days confinement in the Houston County jail.

By letter dated September 11, 2002, CSXT charged Claimant with unauthorized absence from work, commencing June 2, 2002, and it reinstated the earlier Rule G charge, which was issued on February 9, 2001. Following an investigation, which was held on October 24, 2002, Claimant was dismissed from service, effective November 12, 2002. The Organization appealed Claimant's dismissal. Its appeal was denied, and the case ultimately was submitted to this Board for review.

#### **Contentions of the Carrier**

The Carrier contends that Claimant was afforded a full and fair hearing and that his due process rights were protected. Claimant's dismissal was predicated solely upon his failure to refrain from alcohol/drug use and his failure to protect his assignment. Importantly, he was given the opportunity to confirm or deny the charges and, during the hearing, he admitted using cocaine. He also admitted that he was in jail for thirty days and that he had failed to protect his assignment. Given these admissions by Claimant, the Carrier submits that it has carried its burden of proof.

It is the Carrier's additional position that incarceration is not a valid reason for an employee's failure to protect his job assignment. Furthermore, there are no mitigating circumstances that warrant Claimant's reinstatement. He had already been given the

benefits of the Carrier's substance abuse treatment program, and he failed to meet a fundamental condition of that program, i.e., abstinence from alcohol and drugs.

The Carrier submits that the discipline it assessed was fully justified. Claimant knew that as an employee working in the transportation industry, he had to remain drug-free. He was given ample opportunity to meet that obligation. His repeated failure to do so justified his dismissal.

#### **Contentions of the Organization**

The Organization does not deny that Claimant tested positive for cocaine or that he was absent from work because he was in jail. Essentially, it asks for leniency as a result of Claimant's sincere recognition of his errors and his honest intention to stay drug-free. The Organization also argues that for almost twenty-nine years, Claimant was decent and hard-working. Given his lengthy seniority and good employment record, the Organization urges this Board to give him another chance to prove his worthiness.

#### **Findings**

This Board does not doubt that Claimant has suffered as a result of his abuse of alcohol and drugs. Based on his testimony, it appears that his time in jail and the loss of his job have shown him the importance of maintaining sobriety. There can be no doubt, however, that Claimant erred grievously. He fully admitted that while on probation in the judicial system, and following his participation in CSXT's substance abuse treatment program, he tested positive for cocaine. He also admitted that he failed to protect his assignment as a result of his imprisonment for thirty days. These admissions clearly establish Claimant's guilt. There is nothing in this Record to suggest that Claimant was

denied his due process or contractual rights. He had a full and fair hearing. The testimony and evidence presented at that hearing amply supported the Carrier's determination that Claimant was guilty of failing to refrain from alcohol/drugs and was likewise guilty of an unauthorized absence from his assignment.

Claimant's incarceration was not a valid reason for his absence from work. Moreover, his failure to maintain sobriety did not entitle him to yet another chance to change his ways. He was already afforded the benefits of CSXT's substance abuse treatment program, and he did not meet the most essential requirement of that program: abstinence from alcohol and/or drugs.

It is well understood that employees working in the railroad industry must work drug-free. Employees who misuse alcohol or drugs may get the opportunity for a second chance through a substance abuse treatment program such as that provided by CSXT. However, it is universally understood that in the transportation industry, there is no third chance. In *PLB 5323 (Simon)*, for example, the award sustained the dismissal of a trainman for violation of Rule G after Amtrak had given him a "second chance:"

Based upon our review of the record, we find there is substantial evidence to support Carrier's conclusion Claimant was in violation of Rule G, as well as the Rule G waiver agreement. Claimant was well aware of the fact that his failure to pass a urine test would result in his dismissal. By extending Claimant the opportunity to return to work under the Rule G waiver, Carrier has already given him his second chance. There is no basis for modifying the Carrier's decision in this case.

The above-quoted award is just one of many in the railroad industry which recognize that an employer is not obligated to retain an employee who tests positive for drugs or alcohol after having been given the chance to participate in a substance abuse treatment

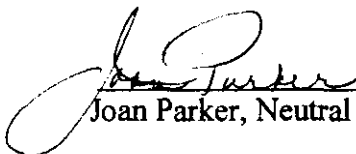
PLB 6564  
Awd 11


5

program. Claimant here presented no defense for his drug use. Thus, the Carrier was within its rights in terminating his employment.

**Award**

The claim is denied.

  
Joan Parker, Neutral Member

  
Carrier Member

Dated: February 17, 2004

  
Organization Member

Dated: 2-17-04