

PUBLIC LAW BOARD NO. 6564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION, INC.

Case No. 12

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

1. The dismissal of Trackman B. T. Stephenson for his alleged violation of Rule G when he tested positive on November 19, 2002 was without just and sufficient cause.
2. Trackman B. T. Stephenson shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

Facts

Claimant B. T. Stephenson was hired by CSXT on April 23, 2001. On October 18, 2001, he was charged with violation of CSXT Operating Rules G and 21 as a result of a Federal Highway Administration random toxicological test which indicated that he had used cannabinoids. Claimant entered CSXT's substance abuse treatment program and was out of service until February 15, 2002. In conjunction with Claimant's participation in the treatment program, he agreed to refrain from using alcohol and drugs.

On November 19, 2002, Claimant was again drug tested, and the test was positive for cocaine metabolites. He was charged with violation of Rule G and Safety Rule 21. Following a hearing, which was held on December 19, 2002, Claimant was dismissed from service by letter dated January 7, 2003. The Organization appealed the dismissal,

and inasmuch as the dispute was not resolved on the property, it has come before this Board for adjudication.

Contentions of the Parties

The Carrier contends that it dismissed Claimant only after a full and fair investigation during which Claimant had proper notice of the charges, sufficient time to prepare a defense, and the opportunity to present testimony and evidence. There is nothing in the Record to suggest that there was any denial of Claimant's contractual or due process rights.

The Carrier further contends that it has sustained its burden of proof. Claimant underwent a conclusive medical test and did not challenge the finding that he had used cocaine. The penalty of dismissal was appropriate because Claimant had already been given a second chance, and he was fully aware that his continued employment depended on his remaining drug-free. However, thirteen months after his first positive drug test, he again tested positive for drugs. Given the seriousness of this offense and the fact that there is no entitlement to a "third chance", the Carrier submits that it had just and sufficient cause to terminate Claimant's employment.

The Organization essentially has requested leniency based upon "...the fact that Mr. Stephenson has been an honest, hard-working, and well respected part of the CSXT family during his tenure of employment." The Organization asserts that Claimant testified honestly and is now sincerely committed to maintaining sobriety. Therefore, the Organization urges the Board to give Claimant another opportunity to return to work.

Findings

There is no evidence in this Record as to any procedural irregularities or contractual violations. Claimant was afforded a full and fair investigation and was not dismissed until after he was given an opportunity to either confirm or deny the fact that he has used drugs. During the hearing, he confirmed the positive tests results for cocaine. He did not challenge the fairness or competency of the test's administration. Clearly, therefore, the Carrier has carried its burden of proof as to Claimant's violation of Rules G and 21.

As to the appropriateness of the discipline imposed, the undisputed evidence in the Record supports the Carrier's decision to terminate Claimant's employment. As an employee working in the transportation industry, Claimant was fully aware of the absolute requirement to remain drug-free. When he failed to meet this requirement in October 2001, he was given a second chance to recover by participating in CSXT's substance abuse treatment program. Regrettably, however, this second chance failed when some thirteen months later, he again tested positive in a routine follow-up drug test.

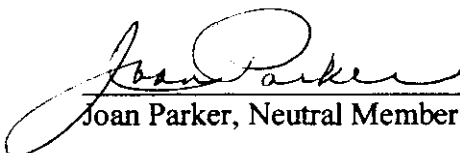
At that point, the Carrier's obligation to Claimant ended, and it was within its rights in dismissing him from service. In the railroad industry, the widely accepted approach to drugs and alcohol in the workplace is "two strikes and you are out." Arbitrators have consistently applied this principle, and there is no basis in this Record for the application of any other disciplinary standard. Claimant must be held accountable for his repeated failure to abide by the Carrier's drug and alcohol rules. He has no entitlement to a third chance.

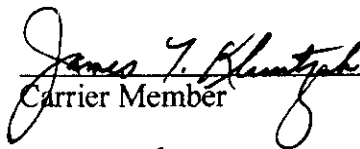
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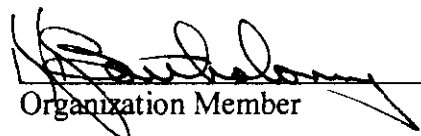
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Award

The claim is denied.


Joan Parker, Neutral Member


Carrier Member
Dated: February 17, 2004


Organization Member
Dated: 2-17-04