Award No. 79
Case No. 79

PUBLIC LAW BOARD NO. 7120

PARTIES TO DISPUTE: (BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYES DIVISION
(
(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated September 8, 2008, T. C. Whitley, Manager System Production Teams, directed A. A. Rodgers ("the Claimant") to attend a formal Investigation in the conference room at the Carrier's Division Office in Atlanta, Georgia, on September 22, 2008, "to develop the facts and place your responsibility, if any, in connection with information that I received on August 25, 2008, from Dr. T. J. Nelson, Chief Medical Officer, that the Company Short Notice Follow-Up breath alcohol testing that you underwent on August 25, 2008, was confirmed as positive at a level of 0.032 gms/210 liters."

As a result of the confirmed test result, the letter stated, the Claimant was charged with a possible violation of CSX Transportation Operating Rule - Rule G, CSX Safeway General Safety Rule - GS-2 Substance Abuse, and his Substance Abuse Treatment Plan. "Additionally," the letter continued, "since this is your second verified positive test within the last five years, this notice will also serve to reinstate the original Rule G and/or Safety Rule 21 charge dated October 2, 2006 which has been held in abeyance in accordance with the provisions of your election to opt for handling in the Employee Assistance program, which was signed by you on October 10, 2008." Copies of the October 2, 2006, charge letter and of the Claimant's election form were enclosed. The letter confirmed that the Claimant would be withheld from service pending the outcome of the Investigation.

The hearing was not held on September 22, 2008, as originally scheduled. The next item of evidence regarding the scheduling of the hearing is a letter dated May 21, 2010, from J. M. Hinnant, Manager System Production Teams, stating that at the request of the Carrier and in agreement with the Brotherhood the Investigation was rescheduled for June 3, 2010, at the CSX General Office Building in Jacksonville, Florida. The hearing was held on that date.

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant's service date with the Carrier was February 7, 2000. At the time of the hearing he was employed as a Machine Operator on a System Production Team. As background to the present charges, by letter dated October 2, 2006, the Claimant was directed to attend a formal Investigation on October 13, 2006, regarding an incident that occurred at a Holiday Inn in Cartersville, Georgia, on September 23, 2006, where he allegedly "became extremely intoxicated, disorderly, argumentative, disruptive, boisterous, and loud . . . .," as a result of which the police were called, and he was arrested. The letter charged the Claimant with violations of General Rule G and Substance Abuse Rule GS-2, among other infractions.

The October 2, 2006, charge letter gave the Claimant the choice of attending a hearing on his alleged violations or of contacting one of the Carrier's Employee Assistance Plan counselors and participating in an approved rehabilitation program. On October 10, 2006, the Claimant signed a document agreeing to take part in counseling and a rehabilitation program. Above the Claimant's signature was the following statement, "I have voluntarily selected the above-indicated options(s):" The Claimant had placed an "X" mark next to the option to consult an EAP counselor and participate in an approved rehabilitation program. He left blank the option for attending a hearing on the alleged Rule G violation. One of the terms of the rehabilitation program that the Claimant agreed to was that "Any report non-compliance with my after-care plan within five (5) years of my return to service result in a hearing on the Rule G/Safety Rule GS-2 charge."

On December 11, 2006, the Claimant signed a document called CSX Transportation Substance Abuse Treatment Plan that stated "Anthony Rogers agrees to the following:" Among the items he agreed to was "Company sponsored urine drug screening/breath alcohol tests on a short-notice basis" and that "Failure to comply or a positive test result can result in medical disqualification or disciplinary action." The "treatment plan" that the Claimant agreed to included an undertaking to "Refrain from alcohol & mind altering drugs" on an "ongoing" basis and to "Let EAP know relapse ASAP." Immediately above his signature on the document, the Treatment Plan stated as follows:

> . . . I understand that failure to comply with any or all of the treatment recommendations may be grounds for disqualification by the Chief Medical Officer and, in some circumstances, may require release of this document to supervision for purposes of disciplinary action. I understand that this contract will

remain in effect for 5 years from date signed . . . .

The Claimant was not given a drug or alcohol test prior to enrolling in the rehabilitation program or signing the contract to comply with the Substance Abuse Treatment Plan.

Approximately 20 months after agreeing in writing to the terms of the Substance Abuse Treatment Plan, the Claimant, early in the morning on August 28 , 2008, was given a short-notice follow-up breath alcohol test by a certified breath alcohol technician. He tested .037 gms/210 liters. In a confirmation test on the same machine performed 15 or 16 minutes later, the reading taken of the Claimant's breath was .032 gms/210 liters. A test result of .02 or higher is considered positive under a CSX Substance Abuse Treatment Plan .

Regarding the September 23, 2006, incident that resulted in the October 2, 2006, charge letter, the Claimant testified that he was in an altercation with a gentleman at a CSXT lodging facility, and it got out of hand. "I was loud," the Claimant testified, "I was not drunk." He was arrested for disorderly conduct, the Claimant stated, and when he returned to the hotel from jail, the timekeeper informed him that he was out of service.

The Claimant testified that his manager told him that the charge letter was coming in the mail and that he needed to sign it or else he would be fired. He was under a doctor's care and was taking medication for depression because of the incident, the Claimant stated, and he signed the waiver of a Rule G hearing without having a drug or alcohol test following the September 23 incident. "There was no alcohol test or drug test given to me," the Claimant repeated.

With respect to the Monday, August 25, 2008, positive alcohol test, the Claimant testified that he went to the hotel on Sunday and had been sick all weekend. He had a cold, he stated, and just stayed in bed. He took NyQuil, a cold medication, before he went

to bed, he stated, and was awakened in the morning by the timekeeper, who told him that he needed to hurry up because he had to take a urine test. He proceeded to dress and brush his teeth, he testified, and rinsed his mouth out with mouthwash. According to the Claimant, he told the breath alcohol technician that he was prepared to take a urine test, but that she told him that he was not taking a urine test but a breathalyzer test.

The Claimant testified that in the first test on August 25, 2008, the breath machine showed a .037 reading and that a follow-up test 15 minutes later resulted in a .032 reading. The Claimant stated, "I did not agree with the test results. I was wanting a urine test and/or blood test . . . to get a more accurate reading." The technician, he testified, told him that she did not have the equipment for a urine test or a blood test. The timekeeper had called the supervisor apparently to report the test results, and the supervisor, the Claimant testified, spoke to the Claimant on the phone and asked him to give the timekeeper his (the Claimant's) lodging card and check out of the hotel. No concern was shown regarding how he was to get home, the Claimant stated, and he was just told to leave.

In a closing statement the Claimant asserted that he was under the assumption that the Rule G bypass is offered after a positive test. At no time in 2006 was he administered a drug or alcohol test, the Claimant stated, and he therefore feels that he was improperly offered the bypass option. As for his signing the paper and accepting the bypass option, the Claimant argued, he was under a doctor's care for depression, and he believes that his supervisor, Mr. Crutchfield, unfairly told him to sign or that he would be fired. When he signed, the Claimant stated, he was "not really coherent at the time" and, since his job was being threatened, he signed under duress.

With regard to his positive test for alcohol on August 25, 2008, the Claimant

stated, "I did not consume any alcohol or beverages. I was sick that whole weekend. I don't think I was given enough time, I wasn't even going into work, I was going to call out. . . ." The Claimant asserted that he believed that the test results were inaccurate, that he washed his mouth out with Listerine in the morning and that he was taking NyQuil.

Following the close of hearing, by letter dated June 22, 2008, the Assistant Chief Engineer System Production Teams notified the Claimant of the Carrier's determination after review of the transcript that the Claimant "was guilty as charged" and that he was "in violation of the cited rules. Specifically," the letter continued, "your actions of having positive Rule G test result after enrolling in the companies [sic] EAP program and further failing to follow the instructions of your treatment plan are insubordinate and unacceptable." The penalty assessed was "immediate dismissal in all capacities from CSX Transportation."

It is the position of the Carrier that Claimant Rodgers was provided a fair and impartial investigation in accordance with Rule 25 of the Agreement and that dismissal was fully justified for his violations of Rule G and of his Substance Abuse Treatment Plan. The Carrier notes that during the hearing the Organization objected to the failure of the Carrier to send out letters notifying all parties of postponements and rescheduling of hearings. The Carrier asserts that the Organization failed to specify any part of the Agreement which requires written confirmation of postponements. Further, the Carrier points out, the Claimant and his Organization representative were in attendance at the hearing, which, the Carrier contends, shows that there was no confusion regarding the postponements.

The Carrier argues that the Claimant's positive breath alcohol test was sufficient evidence to prove that the Claimant was guilty as charged when he failed to abide by his

Substance Abuse Treatment Plan that required him to refrain from using alcohol. Its failure to produce a test form for the 2006 breath alcohol test is not a basis for reversing the Claimant's dismissal, the Carrier contends, because the waiver signed by him and the Substance Abuse Treatment Plan he entered into on December 11, 2006, "clearly indicate Claimant Rodgers waived his right to appeal there and accepted responsibility."

The Carrier also addresses the argument made at the hearing that the Carrier erred in not permitting a blood or urine screening at the time of testing instead of the breath alcohol test administered to the Claimant. It argues that "the Organization failed to demonstrate the other testing would have been more accurate, and as a result, it is apparent the argument is also without merit." The Claimant's self-serving testimony that he did not violate Rule G, the Carrier contends, is contradicted by the testimony of the Carrier witnesses and the overwhelming documentary evidence in the record. Absent significant error, not here present, the Carrier declares, it is the hearing officer's credibility determinations that are accepted at the appellate level.

The discipline of dismissal was fully justified, the Carrier argues, because of the severity of the offense. Many Boards, the Carrier urges, on numerous occasions involving cases on the Carrier's property have ruled that the Carrier may dismiss employees who fail to abide by the terms of their Rule G bypass agreement.

In addition to the arguments made by the Claimant in his closing statement, the Organization argues that there were no test results involving the September 23, 2006, incident that resulted in the October 2, 2006, charge letter to the Claimant. It also contends that there were circumstances, as described in the testimony of the Claimant, that may have caused the positive breath alcohol test. The Organization further argues that the breathalyzer machine used to test the Claimant appears to be out of calibration as

shown by the fact that the reading on the Accuracy Check of the machine was .036, a higher number than the result of the confirmatory test. Finally the Organization reiterated its objection made at the start of the hearing that the hearing should not have proceeded because it was scheduled and rescheduled three times without a charge letter being issued.

With regard to the Organization's argument about the lack of notice of rescheduled hearings, the pertinent language of Rule 25 of the Agreement states as follows:

> **RULE 25 – DISCIPLINE, HEARINGS, AND APPEALS**
>
> Section 1 - Hearings
>
> * * *
>
> (d) An employee who is accused of an offense shall be given reasonable prompt advance notice, in writing, of the exact offense of which he is accused with copy to the union representative. The hearing shall be scheduled to begin within twenty (20) days from the date management had knowledge of the employee's involvement. A hearing may be postponed for a valid reason for a reasonable period of time at the request of the Company, the employee, or the employee's union representative. . . .

In the present case the alleged violation occurred on August 25, 2008, and the charge letter was issued on September 8, 2008, within the time period provided in Rule 25. The charge letter informed the Claimant of the exact offense of which he was accused. The hearing was postponed several times by agreement of both parties, and there is no contention that the postponements were not for a valid reason or for a reasonable period of time. In addition, the Claimant and the Organization appeared at the hearing which was held on June 10, 2010. Presumably they had oral notice of the date, time, and location of the hearing. The evidence thus shows that all provisions of Rule 25 were

complied with in connection with the scheduling of the hearing and that the Claimant and the Organization had actual notice of and appeared at the hearing.

Under these circumstances the Board is not able to find that the Claimant was denied due process in connection with the scheduling of the hearing so as to require overturning or modification of the discipline issued. This Board is not stating that written notice should not be given when the postponement or rescheduling of a hearing takes place. It is certainly good practice to provide written notice. The Board finds, however, that the Claimant's due process rights were not violated so as to require reversal or modification of the discipline on procedural grounds.

The evidence shows that the Claimant was not tested for alcohol in his system before he was charged with a Rule G violation and provided with the Rule G bypass option. No contract language or award has been cited, however, that requires that an employee must test positively for an illegal drug or for alcohol before being charged with a Rule G violation or offered the bypass option.

To the contrary, Award No. 65 of Public Law Board 7120 was a case where an employee was charged in connection with an at-fault vehicle accident and thereafter was offered and accepted a Rule G bypass option and entered into a Substance Abuse Treatment Program without ever testing positive for drug or alcohol use. The Carrier demanded that the claimant in that case agree to the bypass option and submit to a rehabilitation treatment program or else face a disciplinary hearing because it believed that he had violated Rule G in that he was under the influence of alcohol at the time of his at-fault accident even though he was not given an alcohol test.

The facts of the present case are similar to those in Award No. 65. The Carrier believed that the Claimant was under the influence of alcohol at the time of his altercation

and arrest for disorderly conduct at the Holiday Inn on September 25, 2006, even though he was not tested for alcohol at the time. It therefore offered him the bypass option as a means of avoiding a hearing on the Rule G violation with which he was charged in the charge letter dated October 2, 2006. The circumstances of the offer of the bypass option to the Claimant in this case were therefore the same in principle as in Award No. 65.

There is nothing in the language of Rule G that requires that the employee be tested before being charged. Certainly a positive test would strengthen the Carrier's case against an employee charged with a Rule G violation. It acts at its risk in going to hearing without a positive test result to support its case. The Carrier, however, took that risk by charging the Claimant of a Rule G violation in its charge letter to him of October 2, 2006. The Claimant, on his part, chose not to challenge the Carrier but took the safe course of accepting the offered bypass option in lieu of going to hearing and agreeing in writing to the terms of the Substance Abuse Treatment Plan that he signed on December 11, 2006. Those terms included a promise to refrain from alcohol use for the term of the agreement and that a positive test result could result in disciplinary action. The Claimant cannot now fairly complain that he is being held to the terms of the agreement that he signed.

The Claimant contends that he signed under duress because his supervisor told him that otherwise he would be fired. The record evidence belies that claim. The document on which the Claimant was offered the alternative options of a bypass agreement to enter an approved rehabilitation program or a hearing on the charges against him was dated October 2, 2008. The document was included with the charge letter of the same date. The Claimant did not sign the document accepting the bypass option until October 10, 2010. He therefore had plenty of time in the privacy of his own residence to decide whether to go to hearing on the Rule G charge and face possible dismissal or to agree to

enter into a rehabilitation program. He had the right and freedom to consult with the Organization before making his decision. He chose the bypass route and is accountable to live up to the terms that he agreed to in writing.

The Claimant declares that his supervisor threatened that he would be fired. But the charge letter made clear to him that he would be given a hearing. His supervisor may have told him that he could be fired if he went to hearing and was found guilty. But that would not be a threat. It would be a fact. The CSX Individual Development & Personal Accountability Policy (hereinafter "IDPAP") expressly provides that a Rule G violation is a Major Offense for which the discipline for a first offense is "Discipline up to dismissal." The IDPAP, however, also states "By-Pass Option Still Available." The employee must therefore decide whether to choose to go to hearing and, if found guilty, face possible dismissal as discipline or accept the bypass option and enter a rehabilitation program. That does not constitute duress.

This case differed from Award No. 65 in one respect. In Award No. 65 the waiver of a right to a hearing contained a provision that stated that if treatment was recommended by the EAP counselor, it was to be the equivalent of the claimant's "first verified positive test for the purpose of administering future discipline, if needed." There was no such provision in the waiver document signed by the Claimant in this case. The Board, however, does not deem the absence of such a provision in the waiver document as precluding the Carrier from assessing dismissal as discipline in the present case.

The IDPAP expressly provides that "Discipline up to dismissal" may be assessed for a first Rule G violation. There is an exception in that the Policy also states "By-Pass Option Still Available." The Claimant, however, has already availed himself of that exception. There is no credible evidence in the record that the Claimant erroneously

elected the bypass option on October 10, 2006, or that the Carrier did not have probable cause to charge him with a Rule G violation in connection with his loud and disruptive behavior at a company-provided facility on September 23, 2006, causing his arrest for disorderly conduct. The practice at the Carrier is to permit an employee charged with a Rule G violation to exercise a bypass option once during a five-year period, not twice. To allow the Claimant a second opportunity to bypass the disciplinary procedure on a Rule G charge would be contrary to the established practice. The Board will not require the Carrier to make an exception in this case.

It is necessary therefore to determine whether there was substantial evidence to support the Carrier's finding of guilt in this case and the assessment of dismissal as discipline. Rule G states:

> G. Employees reporting for duty, on duty, on CSX property or occupying facilities provided by CSX are prohibited from having in their possession, using or being under the influence of alcoholic beverages or intoxicants.
>
> Employees shall neither report for duty nor perform service while under the influence of nor use while on duty or on CSX property any drug, medication or other substance, including prescribed medication, that will in any way adversely affect the employees' alertness, coordination, reaction, response or safety.
>
> The illegal use and/or possession of a drug, narcotic, or other substance that affects alertness, coordination, reaction, response, or safety, is prohibited while on or off duty.

The Claimant tested positive for alcohol at the level of .032 gms/210 liters in a confirmatory breath alcohol test at 6:08 a.m. on Monday morning, August 28, 2008. Sixteen minutes earlier at 5:52 a.m. he had tested positive at a level of .037 gms/210 liters. A positive breath alcohol test of .032 is considered by the Carrier as an indication of being under the influence of alcohol. This is consistent with Title 49, Part 219 of the Code of Federal Relations, which states in §219.101 (4) as follows:

> No employee tested under the provisions of this part whose test result indicates an alcohol concentration of .02 or greater but less than .04 may perform or continue to perform covered service functions for a railroad, nor may a railroad permit the employee to perform or continue to perform covered service, until the start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

The .032 alcohol concentration test result for the Claimant was substantial evidence of a violation by him of the first paragraph of Rule G, which prohibits an employee from occupying facilities provided by CSX while being under the influence of alcoholic beverages or intoxicants.

The Claimant argued that his positive reading was the result of his having rinsed his mouth with an alcoholic mouthwash in the morning or having taken NyQuil for a cold before going to bed. The documentary evidence shows that the second blood alcohol reading was taken 16 minutes after the first reading. The Claimant acknowledged that there was a 15 minute interval between the two tests and that he was not permitted to drink anything or put anything in his mouth before the first test or between tests. The Board believes it to be common knowledge that any alcohol in a person's mouth as the result of using a mouthwash will dissipate after 15 minutes. The burden is therefore

properly placed on the Claimant to show that any mouthwash that he used the morning of the test affected the result of his confirmatory test. No such evidence was offered at the hearing.

Nor does it seem reasonable to this Board that a cough medicine taken in accordance with the prescribed dosage the night before one is given a blood alcohol test could cause a positive test result at the level of .032. The Board is not aware of any award or scientific evidence supporting a claim that a standard dose of cough medicine taken the night before a blood alcohol test could result in a positive reading. The burden is therefore also properly placed on the Claimant with regard to the cough medicine defense to show that the medication rather than consumption of an alcoholic drink was the cause of his positive test result. That burden was not met.

The Claimant also testified, "I did not agree with the test results. I was wanting a urine test and/or blood test . . . to get a more accurate reading." In reply to that argument the Carrier contends that "the Organization failed to demonstrate the other testing would have been more accurate, and as a result, it is apparent the argument is also without merit." In support of the Claimant's contention that he should have been allowed to be tested by blood or urine sample, the Organization introduced into evidence a copy of the first page of an Agreement between CSX Transportation and The Brotherhood of Maintenance Way Employees. The Agreement states in pertinent part as follows:

> Recognizing that the use of alcohol and/or drugs is a serious problem within the railroad industry, management and the Maintenance of Way employees, in an effort to assist the apparent Rule G violator retain an employment relationship and seek rehabilitation, jointly consider a change in Rule G policy desirable, and, therefore, agree to modify the respective applicable discipline rule or rules to the extent hereinafter provided:
>
> 1. If the Carrier has probable cause to believe that a Rule G violation has been committed and no other rule violation has occurred, the

situation will be handled in the following manner:

A. Employee will immediately be removed from service.

B. When this occurs, the employee does have the right to request a drug and/or alcohol test in connection with the apparent Rule G violation. Such employee will be informed of his/her right in that regard.

C. If the employee requests to be tested under Paragraph B, he/she must provide both urine and blood samples.

D. Blood given as part of the drug and/or alcohol test under Paragraph C, will be used as confirmation of the finding in the EMIT screening of the urine and will be considered conclusive.

E. Supervisor should, when practicable, make an effort to ensure that the employee will return to his home safely.

F. Employee will be notified of Rule G. Violation charge in accordance with the applicable agreement rule. . . .

Clearly in a situation covered by the foregoing Agreement, the Carrier is bound by its terms. It is not a question of whether blood, breath, or urine testing is more accurate. Paragraph D states that in the situation covered by the Agreement "Blood given . . . will be used as confirmation of the finding in the EMIT screening of the urine and will be considered conclusive." That is what the parties agreed to, and it is binding where it applies so long as the Agreement is in effect.

The Agreement, however, does not appear to apply to the present situation. By its terms the Agreement applies where "the Carrier has probable cause to believe that a Rule G violation has been committed. . . ." The breath alcohol test given in the present case was not administered because the Carrier had probable cause to believe that a Rule G violation had been committed. It was given as a follow-up test in conjunction with the Substance Abuse Treatment Plan that the Claimant had agreed to in writing.

The introductory paragraph of the Agreement also indicates that it was not intended to apply to follow-up test situations. That paragraph gives the purpose of the Agreement "to assist the apparent Rule G violator [to] retain an employment relationship and seek rehabilitation." An employee who has taken a follow-up test has already enrolled in a rehabilitation program. He is not someone who is to be assisted in seeking rehabilitation. Nor is there any evidence that the Carrier permits employees who have enrolled in a rehabilitation program, and agree to a Substance Abuse Treatment Plan providing for follow-up testing, to enroll in a rehabilitation program a second time after a positive follow-up test. For these reasons, absent additional evidence that the Agreement in question was intended to apply in follow-up testing situations, the Board finds that the Agreement does not apply in the present case.

The Claimant's and the Organization's final defense to the validity of the breath alcohol test result is that the breath testing machine was not properly calibrated as evidenced by the fact that the reading on the accuracy check was .036, a higher reading than the confirmation test reading of .032. That argument assumes that the machine was testing the same sample as was used for the confirmation test or else that the Claimant was tested a third time. Neither assumption is correct. The accuracy check is done using a portable calibration standard containing a known amount of alcohol that the technician carries with her. As Exhibit 3 shows, the target of the sample was a test result of .038, with an allowance of plus or minus .005. The accuracy check actual test result on the sample was .036, within the tolerance range. It is therefore reasonable to assume that the testing by the machine of the Claimant's breath sample was also accurate.

The Organization and the Claimant have not provided any persuasive basis for questioning the accuracy of the Claimant's positive breath alcohol test result of August

25, 2008. The Board therefore finds that the Carrier has established by substantial evidence that the Claimant violated Rule G on August 25, 2008, as charged in the letter to him dated September 8, 2008. The IDPAP classifies a Rule G violation as a Major Offense for which "Removal from service - Discipline up to dismissal" is permitted for a first offense.

In the present the Claimant was charged with a separate Rule G violation two years earlier and, instead of going to hearing on the charge, voluntarily elected to sign onto a Substance Abuse Treatment Plan pursuant to a bypass option offered to him. Two years later, after failing a follow-up test pursuant to his Substance Abuse Treatment Plan, he was again charged with a Rule G violation and, in addition, with violation of his Substance Abuse Treatment Plan. The practice at the Carrier is to allow an employee only one bypass option pursuant to a Rule G charge within a five-year period. Nothing in the record of this case persuades the Board that the Claimant erroneously elected the bypass option in October, 2006, or that the Carrier did not have probable cause to believe that the Claimant violated Rule G in connection with his disruptive behavior that caused him to be arrested for disorderly conduct while occupying a company-provided facility on September 23, 2006. The Board is of the opinion that the Carrier acted consistent with the terms of the IDPAP when it assessed dismissal as the discipline for the Claimant's Rule G violation of August 25, 2008. The Board so finds. Cf. Public Law Board No. 7120, Award No. 65. The claim will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.

Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
October 10, 2010