

PUBLIC LAW BOARD NO. 7120

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

STATEMENT OF CHARGE:

By letter dated October 15, 2010, W. O. Price, Manager Program Instruction, instructed T. H. Pewitt ("the Claimant") to attend a formal Investigation in the Carrier's Nashville Division headquarters building in Nashville, Tennessee, on October 27, 2010, with the Claimant as Principal. "The purpose of this investigation," the letter stated, "is to determine the facts and place your responsibility, if any, in connection with Clinical Manager-EAP Daniel Bowen's letter to Staff Engineer Buford Smith dated October 8, 2010 advising that administrative handling would be in order based on your failure to follow EAP recommendations which you agreed to on September 29, 2009 and previously when you took the Rule G By-pass offered to you in Roadmaster Price's letter of April 25, 2008."

"Consequently," the letter continued, "in accordance with the drug and alcohol agreement (Appendix T), the Carrier's charges dated April 25, 2008 in which you were charged for a possible violation of CSXT Operating Rule 'G' and/or CSXT Safety rule GS-2 and/or CSX Drug/Alcohol Use Policy, resultant from your removal from service after being observed on the morning of April 18, 2008 by Roadmaster W.O. Price and Trainmaster Phil Logan, to be smelling of alcohol and having withdrawn and glazed eyes, are being reinstated." The hearing was held as scheduled.

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 July 19, 2006. His most recent position with the Carrier was that of Trackman. The Claimant was originally charged with a Rule G violation on April 25, 2008, after his supervisor, then Roadmaster Price, and Trainmaster Logan, on April 18, 2008, smelled alcohol on his breath and believed him to be under the influence of alcohol while at work for the Carrier in Murfreesboro, Tennessee. The April 25 letter also charged him with a possible violation of CSXT Safety Rule GS-2 and the CSX Drug/Alcohol Use Policy. Prior to being charged, the Claimant had been given a breath alcohol test on April 18th and tested positive.

The charge letter dated April 25, 2008, gave the Claimant the option of a Rule G bypass in lieu of a formal Investigation and hearing. A Rule G bypass is an option given to an employee charged with a first Rule G violation within a five-year period to participate in a rehabilitation program through the Carrier's Employee Assistance Plan ("EAP") in lieu of a hearing on the Rule G charge. The Claimant elected the bypass.

Under the terms of the Drug and Alcohol Agreement dated July 29, 1988, between CSX Transportation and The Brotherhood of Maintenance Employees, when a charged employee chooses the Rule G bypass, the formal Investigation or hearing on the Rule G

charge is not canceled, but is held in abeyance, subject to be reactivated if an employee fails to comply with the requirements of his rehabilitation program.

Pursuant to the Rule G bypass option offered to him in the April 25, 2008, charge letter, the Claimant entered into a rehabilitation program and, on or about August 26, 2008, signed a Substance Abuse Treatment Plan. Based on the advice of the EAP counselor who was handling the Claimant's situation, the Claimant was permitted to return to work on September 10, 2008. He worked until April 6, 2009, at which time he asked for a 60-day leave of absence from his job because he fractured his arm while mowing his yard.

While on his leave of absence, the Claimant had some additional EAP issues, and he was permitted to enter into a second Substance Abuse Treatment Plan on September 29, 2009. He did not return to work after his leave of absence until October 27, 2009. He continued to work until December 9, 2009, which was his last day of work for the Carrier. He was absent two days with permission on December 10 and 11, 2009. Thereafter he was absent without permission until he requested to return to work in August, 2010. He did not ask permission to be off work after December 11, 2009, and did not give prior notice of his absence or communicate with the Carrier for a period of months during his absence.

Pursuant to the Substance Abuse Treatment Plan that the Claimant had agreed to, a technician was sent to the Claimant's work site on December 14, 2009, to perform an unannounced follow-up breath alcohol test on the Claimant, but he did not show up for work, and the test could not be performed. Another attempt was made for a follow-up test on the Claimant the following week on December 21, 2009. Again he did not show up for work. The Claimant was not aware beforehand that a follow-up breath alcohol test

of him would be attempted to be performed on those days. After the second failed attempt management informed the testing company that it would call them and inform them when the Claimant showed up for work.

Staff Engineer Buford Smith testified that the Carrier was not able to contact Mr. Pewitt. He stated, "I think his address had changed and his phone number had changed and so we let it ride assuming that he was working through his EAP Counselor to work out whatever problems that he had." At one point, Mr. Smith testified, in 2010, his EAP counselor, Larry Mason, was in Nashville, and he (Mr. Smith) asked Mr. Mason if he had any contact with Mr. Pewitt. Mr. Mason told Mr. Smith that he had not been able to reach Mr. Pewitt to know what his situation was and that Mr. Pewitt had made no contact with him.

In August, 2010, Mr. Smith testified, the Claimant contacted him to return to work and asked for a return-to-work physical. Not having heard anything about the Claimant's status with EAP, Mr. Smith called Daniel C. Bowen, Clinical Manager-EAP, regarding the Claimant's status. Mr. Bowen told Mr. Smith that he would look into it, talk to the Claimant's EAP counselor, and determine at what point to set up a return to work physical. After his conversation with Mr. Bowen, Mr. Smith spoke with Mr. Pewitt and told him that he would not set up a return to work physical for him until Mr. Bowen again contacted him.

On October 8, 2010, Mr. Buford sent the following letter to Mr. Smith by email:

This letter is to advise that employee T. Pewitt has been non-compliant with the terms of the EAP-1 that was signed on September 29, 2009. I spoke with Mr. Pewitt in August of this year about this and advised him if he had any documentation to the contrary I would wait for it. He has not been in further

contact with me nor have I received anything from him that supports his assertion that he has been following his Substance Abuse Treatment Plan.

At this point I must advise that administrative handling would be in order based on his failure to follow EAP recommendations which he agreed to on September 29, 2009 and previously when he took the Rule G Bypass offered to him in Roadmaster Price's letter of April 25, 2008.

The Substance Abuse Treatment Plan agreed to in writing by the Claimant on September 29, 2009, was introduced into evidence at the hearing. One part of the Plan agreed to by the Claimant provided as follows:

Comply with treatment plan as follows:

1. Abstain completely mind and mood altering drugs including alcohol at all times.
2. Obtain male sponsor & permission for EAP to contact.
3. Go to minimum 3 AA meetings a week.
4. Call Cornerstone weekly for first 6 months & then weekly thereafter.
5. Meet with EAP designee on quarterly basis.
6. Follow recommendations of Cumberland Heights.
7. If relapse, take self out of service, contact EAP immediately.

After receiving the letter from Mr. Bowen, Mr. Smith gave instructions for the charge letter dated October 15, 2010, to be sent to the Claimant by Manager Program Construction Price and for the Claimant to be held out of service. The Carrier did not send the Claimant a Rule 26 letter regarding his absence from work beginning December 11, 2009, Mr. Smith testified, because it considered alcoholism to be a medical issue and the Agreement says that you cannot use the Rule 26 letter if an employee is off due to

sickness. The Carrier, Mr. Smith stated, "chose not to send that type of letter out but to wait for Mr. Pewitt to surface and try to find out what was going on with him."

Asked by the Organization representative if the Carrier knew if Mr. Pewitt was off sick or why he was off, Mr. Smith testified, "We did not know why he was off, he did not contact us and let us know. We only knew that he was still under this plan with EAP and we left that up to the EAP Department."

Mr. Smith was asked on cross-examination whether to his knowledge between December, 2009, and August, 2010, Mr. Pewitt was conducting himself in accordance with his EAP program. He answered, "I do not know what his status was. We were not contacted by him as far as his status and where he was." Mr. Smith was further asked on cross-examination, "If someone is in the EAP program and they are not doing what they are supposed to do, who does the EAP contact." He testified, "The EAP eventually would contact the Administrator for the Division to set up like we did in this case, a hearing."

The only contact he had with the EAP concerning the Claimant prior to October, 2010, Mr. Smith testified, was his conversation with Mr. Mason sometime in 2010, and his conversation with Mr. Bowen in August, 2010. The Carrier, Mr. Smith stated, did not send a letter to Mr. Pewitt stating that he was not adhering to the terms of the Plan that the EAP had set up for him. When Mr. Pewitt did not return to work after the end of his 60-day leave of absence, Mr. Smith testified, he was not sent a letter stating that he needed to return to work or apply for another leave of absence. On the two days in December, 2009, that Mr. Pewitt did not report for work when the testing service wished to give him follow-up breath alcohol tests, Mr. Smith testified, he was absent without permission, although, so far as Mr. Smith is aware, he (Mr. Pewitt) did not know that he was to be

tested either of those days.

Daniel C. Bowen, Clinical Manager for the Carrier's EAP program since December, 1987, testified that he has the day-to-day oversight of the clinical process with the EAP staff and handles all administrative issues regarding Rule G. With regard to his letter dated October 8, 2010, to Mr. Smith, he was asked why he felt that Mr. Pewitt did not comply with his Treatment Plan. He answered as follows:

Well Mr. Pewitt had agreed under his treatment plan to . . . attend meetings . . . and to . . . contact Cornerstone weekly, that's the Provider that we contracted for follow up. They do both phone and . . . keep track of documentation for like meeting attendance and they also have somebody on their staff that periodically goes out into the field to meet with employees in certain regionalized areas. And we contract with them for that aspect of the follow ups since his EAP Manager [Larry Mason] is out of Baltimore, Maryland. And then he is also to meet with that EAP designee on a quarterly basis[,] follow recommendations with the Provider he has gone to see and you know, provide documentation.

And that had not been done, you know the contact with the Treatment Provider was usually by message and there was usually no way to get back to him. And he had not provided any documentation of any meeting attendance; I think the last time they received anything regarding that was October 7, 2008.

I spoke to Mr. Pewitt prior to sending this letter and he told me that he had been compliant. And I said well, I will leave this open until you can provide me with that documentation, spoke to him in August of this year. And I never heard from him again or got anything that would indicate that he had indeed been following [the] treatment plan he agreed to on 9/29/08 [sic]. (Tr. 30-31).

Mr. Bowen testified that he spoke with the people at Cornerstone Recovery in Louisville, Tennessee, who were contracted with for follow-up work with the Claimant, and that they said that the only meeting verification that they had on file was one that they received on October 7, 2008. The Substance Abuse Treatment Plan signed by the Claimant included the name and telephone number of a contact person with the Recovery Monitoring Program of Cornerstone Recovery that the Claimant was required to call once a week for the first six months and monthly thereafter. Mr. Bowen testified that his EAP

database, which is part of the EAP case management system, contained an entry dated April 20, 2010, stating that a person named Misty, who works for the Recovery Monitoring Program, telephoned Mr. Pewitt, who had made no telephone contact with the program since February 26, 2010, but that the number called by Misty did not accept incoming calls. According to Mr. Bowen, Mr. Pewitt began calling Cornerstone again in the summer of 2010, but had not called for several months prior thereto.

Mr. Bowen testified on cross-examination that Mr. Pewitt's EAP counselor was Larry Mason out of Baltimore. He was asked on cross-examination if he had any kind of documentation from Mr. Mason stating that Mr. Pewitt was not following the program. "I have had several discussions with Mr. Mason about that," Mr. Bowen stated. They had no written communication. In addition to the April 20, 2010, entry in the EAP case management system for the Claimant, Mr. Bowen mentioned another entry dated July 7, 2010, stating that EAP manager Larry Mason asked Mr. Pewitt why he hadn't been keeping up with the EAP, and he said that he had no phone.

Mr. Bowen testified that the practice of the clinical staff is to rely on notes in their database, which is part of the case management system that they use. Based on the notations in their case management system, according to Mr. Bowen, the EAP staff members discuss the cases and the possible alternative actions to be taken, whether it is medical disqualification, return to work, further treatment, or noncompliance status. Their actions, he explained, are based mostly on staff discussions, and there is not a formal written process.

Prior to Mr. Bowen's letter dated October 8, 2010, to Mr. Smith, neither Mr. Bowen or Mr. Mason ever wrote the Carrier or Mr. Pewitt stating that Mr. Pewitt was not in compliance with his Substance Abuse Treatment Plan that he signed on September 29,

2009. In explanation of the Carrier's present action, Mr. Bowen testified that "given the continued non-compliance over quite a long period of time, we reverted to the terms of the agreement," referring to the Drug and Alcohol Agreement between the Carrier and the Organization dated July 29, 1988.

The Claimant, Thomas Pewitt, testified as follows. He is a Trackman with four years of service. He was removed from service on April 18, 2008, after being told that he smelled from alcohol. He was given an alcohol test that morning, and he tested positive. On May 14, 2008, he signed a document selecting the Rule G bypass option. He contacted an EAP counselor within five days of receiving the charge notice and went through a program with the EAP. He returned to work sometime in September, 2008. He requested a leave of absence in April, 2009, because he broke his hand. He came back to work the later part of September, 2009.

He obtained a male sponsor [the Claimant's testimony continued] as provided for in the Substance Abuse Treatment Plan he signed on September 29, 2009. He attended AA meetings three times a week. With regard to whether he called Cornerstone weekly the first six months of his Treatment Plan and then monthly thereafter, he did so "to the best of my ability." Regarding whether he met with the EAP designee, Larry Mason, on a quarterly basis, he did so "whenever I was told to do so." He followed the recommendations of Cumberland Heights. Questioned, "Do you feel like you violated or were non-complaint with your Substance Abuse Treatment Plan?" he stated, "I was never told that I was doing anything wrong so as far as I knew I was doing everything right."

The Claimant acknowledged that he had a phone conversation with Mr. Bowen in August, 2010, in which Mr. Bowen requested documentation of him regarding items in the Substance Abuse Treatment Plan that Mr. Bowen thought that he was not in

compliance with. He was not able to provide any documentation, the Claimant testified, and he did not have any documentation. He first contacted the Carrier about returning to work in June, 2010, the Claimant stated. He contacted both the Carrier's Medical Department and Mr. Buford Smith at that time, the Claimant testified.

In response to questions from the Organization representative, the Claimant gave the following testimony. He was on a Rule G bypass. He has been to his AA meetings. He has been in touch with an EAP counselor. In his conversation with Mr. Bowen, Mr. Bowen did not tell him that he was in noncompliance with his Rule G Treatment Plan. His EAP contact, Mr. Mason, did not tell him that he was not in compliance. He did not receive anything from the Carrier prior to October, 2010, saying that he was not in compliance. In August, 2010, he called Mr. Bowen on his (the Claimant's) telephone. During the time that he was off on a leave of absence nobody from the Carrier called him and said that he was off too many days and needed to return to work. Nor did he receive a letter from the Carrier stating that he would be charged if he did not return to work.

Asked whether he felt that he had done anything to be in noncompliance with the Rule G program, the Claimant answered, "Not to my knowledge." The Cornerstone treatment facility never sent him anything stating that he was not in compliance with the policy, the Claimant testified. It is his opinion that he was in compliance with the policy, the Claimant stated.

On redirect examination the hearing officer asked the Claimant, "Do you have any documentation, any records showing that you were in compliance with these six or seven items on this Substance Abuse Treatment Plan?" He answered, "No."

In a closing statement the Claimant asserted, "I thought I was in compliance with all the rules and I'm just ready to go back to work. I have pretty much lost everything

that I've owned. I haven't been getting paid and if I was doing it wrong the last time, I will just do it to the best of my ability, I mean. As far as I knew I was doing it right; nobody ever notified me any different so. I am just ready to get back to work."

The Organization representative stated that he did not believe that the Claimant was afforded a fair and impartial hearing because to the best of the Claimant's knowledge, he was following the Treatment Program, and nobody, whether Mr. Bowen, Mr. Mason, or anybody else from the Carrier sent him any kind of letter stating that he was not in compliance.

Following the close of the hearing, by letter dated November 16, 2010, the Division Engineer notified the Claimant of the Carrier's finding that during the hearing on the charges against him sufficient evidence was presented to substantiate the charges that he violated Rule G, General Safety Rule GS-2, and his Substance Abuse Treatment contract. The letter further stated the Carrier's determination that the hearing was conducted in accordance with the Claimant's contractual due process rights and that the evidence demonstrated that he was guilty as charged. It was his decision, the Division Engineer wrote, that the discipline to be assessed was the Claimant's "immediate dismissal in all capacities from CSX Transportation."

The Drug and Alcohol Agreement of the parties dated July 29, 1988, gives an employee charged with a Rule G violation the option of going to hearing on the charge or entering a rehabilitation program with the understanding that failure to participate in the program will reinstate the Rule G charge and the hearing on the charge. The Carrier was notified by the director of its EAP, Daniel C. Bowen, Clinical Manager-EAP, that the Claimant failed "to follow the EAP recommendations which he agreed to on September 29, 2009 and previously when he took the Rule G Bypass offered to him in Roadmaster

Price's letter of April 25, 2008." As a result the Carrier reinstated the Rule G and related charges originally made against the Claimant on April 25, 2008, and notified the Claimant to attend the present Investigation.

The Board must now determine if the Carrier has established by substantial evidence that the Claimant violated the terms of his Substance Abuse Treatment Plan. Clinical Manager-EAP Bowen testified that Cornerstone Recovery, one of the firms that the EAP contracts with for follow-up services with regard to employees who entered into a Substance Abuse Treatment Plan, handles the weekly telephone conversations required of employees as part of their treatment and also keeps track of documentation of meeting attendance by employees. Mr. Bowen testified without contradiction that no documentation was provided to Cornerstone by Claimant Pewitt. (Tr. 30-31). Mr. Bowen further testified that Claimant Pewitt was also supposed to provide documentation of meeting attendance to his EAP manager in their quarterly meetings but failed to do so. (Id.). Claimant Pewitt did not deny Mr. Bowen's testimony indicating that the Claimant was expected to provide Cornerstone and his EAP counselor documentation of his AA meeting attendance and that he failed to provide such documentation.

Mr. Bowen testified that the EAP case management system notations show that the last time that Mr. Pewitt provided documentation of any meeting attendance was October 7, 2008. Although Mr. Pewitt testified that he went to AA meetings three times a week, he acknowledged that he did not provide documentation of such attendance and that he had no documentation (Tr. 53). It is not unreasonable for the EAP to require documentation of AA meeting attendance because otherwise it has no means of verifying compliance with a very important part of the employee's Treatment Plan. Without confirming documentation, the EAP staff need not believe an employee's self-serving

assertion that he has complied with his undertaking to go to AA meetings three times a week. The motivation for an employee, whose job is at stake, to lie about his attendance is too great for the EAP staff to accept an employee's word about meeting attendance where the employee has been told that he must provide documentation of attendance but fails to provide it. That the Claimant was aware of his obligation to provide documentation is evident from the fact that he had provided it on October 7, 2008 (Tr. 31, 33). However, according to the evidence, he did not provide documentation any time thereafter.

From Mr. Bowen's undisputed testimony it is clear that when, in their telephone conversation in August, 2010, he gave Mr. Pewitt the opportunity to provide documentation of his compliance with his Treatment Plan, Mr. Bowen was not saddling Mr. Pewitt with some new burdensome requirement. He was merely giving him another chance to provide the EAP staff with the documentation that it was his responsibility to turn in from the beginning. The Claimant failed to provide the requested documentation to Mr. Bowen or to produce such documentation at the hearing.

In addition to the testimony regarding the failure of the Claimant to provide documentation of AA meeting attendance, the Carrier presented other evidence of the Claimant's failure to comply with the terms of his Treatment Plan. Mr. Bowen testified that according to the notations regarding Mr. Pewitt in the EAP's case management system, after February 26, 2010, Mr. Pewitt ceased making calls to the contact person at Cornerstone Recovery and that it was not until the summer of 2010 that he resumed making calls (Tr. 38, 33). Further, apparently from entries in the EAP's case management system, Mr. Bowen testified that on July 7, 2010, EAP Manager Mason, who was the Claimant's counselor, asked the Claimant why he had not been keeping up with his EAP

obligations, and the Claimant said that he had no phone. (Tr. 39).

Mr. Pewitt did not dispute Mr. Bowen's testimony regarding the Claimant's lack of compliance with his obligation to call Cornerstone Recovery. When asked, "Did you call Cornerstone weekly for the first six months and then monthly thereafter?", he answered, "To the best of my ability." He did not deny that he had failed to make any calls for a period of months from February 26, 2010, to the summer of 2010. Nor did the Claimant deny that on July 7, 2010, his counselor, Mr. Mason, asked him why he had not been keeping up with his EAP undertakings, and he said that he had no phone.

The Board finds that the Carrier has established by substantial evidence that there was significant lack of compliance on the Claimant's part with the terms of the Substance Abuse Treatment Plan that he agreed to. Failure to provide documentation of attendance at AA meetings and failure to make required weekly telephone calls over a period of months are substantial violations of the Treatment Plan. The Claimant has provided no explanation for this lack of compliance on his part with the terms of the Treatment Plan.

The Claimant gave general testimony attempting to show that he was in compliance with the Treatment Plan. Thus he testified that he has been to his AA meetings and been in touch with his EAP counselor. He did not deny, however, that he failed to provide documentation of his attendance at AA meetings. Where the Claimant has been specifically informed of his obligation to provide documentation, as was the case here, but fails to provide the requested documentation covering a period of months, the EAP and the Carrier are entitled to disbelieve his claim that he attended the meetings for which no attendance documentation was provided.

In addition, as noted, the Claimant did not deny the testimony that he failed to make the required weekly calls to Cornerstone, as provided for in his Treatment Plan. He

merely stated that he called "To the best of my ability." He offered no explanation of why he failed to call, as the evidence shows, between February 26, 2010, and the summer of 2010.

There is additional evidence in the record that lends credence to the Carrier's and the EAP's contention that the Claimant was not living up to his obligations under the Substance Abuse Treatment Plan that he signed. Beginning December 12, 2009, for a period of several months until he requested to return to work, he was absent from work without permission. As Staff Engineer Smith testified, "We did not know why he was off; he did not contact us and let us know. We only knew that he was still under this plan with EAP and we left that up to the EAP Department." (Tr. 25).

The Organization correctly noted at the hearing that Mr. Pewitt was not charged with any attendance violation or failure to protect his assignment. Nevertheless the fact that the Claimant was absent from work for a period of several months without making any contact with the Carrier regarding his absence, shows a pattern of behavior reflecting disregard of one's basic responsibilities as an employee. Those responsibilities included both attendance at work and compliance with the terms of his Treatment Plan, designed to rehabilitate him so that he could return to work and perform the duties for which he was hired. The fact that the Claimant failed over a period of several months to meet the most basic obligation of an employee to notify his employer when he is unable to appear for work lends credence to the claim that during this same period of time he failed to comply with his commitments under the Substance Abuse Treatment Plan.

The Organization stressed at the hearing that neither the EAP or the Carrier gave any written notice to the Claimant that he was not complying with his Substance Abuse Treatment Plan. However, according to the evidence, both Mr. Mason and Cornerstone

Recovery attempted to communicate with the Claimant but were unable to do so either because he had no phone at the time or did not have a phone that accepted incoming calls. It was the Claimant's responsibility to provide the EAP and any EAP contractors that he was working with a telephone number where he could be reached, or else make arrangements to be communicated with in some other way.

The Claimant asserts that he did not know that he was not in compliance with his Treatment Plan because nobody told him this. How could the Claimant fail to be aware that he was not in compliance? He stopped providing any documentation of attendance at AA meetings after October 7, 2008, although until then he was providing documentation. He failed to make calls to Cornerstone for a period of several months after February 26, 2010, although his Substance Abuse Treatment Plan dated September 29, 2009, stated, "Call Cornerstone weekly for first 6 months & then monthly thereafter." On July 7, 2010, his EAP counselor, Mr. Mason, asked him why he had not been keeping up with his EAP commitments. On the undisputed evidence in this record, it is not credible that the Claimant was not aware that he was not complying with the terms of the Treatment Plan that he signed when he chose the bypass option in connection with his Rule G violation.

The Drug and Alcohol Agreement between the parties dated July 29, 1988, like most agreements, lays responsibilities on both parties. It obligates the Carrier to take certain steps in an effort to rehabilitate an employee who demonstrates a substance abuse problem, while at the same time it places important responsibilities on the employee to take certain actions designed to overcome his indulgence in or dependence upon an addictive substance. The evidence establishes that the Carrier substantially complied with its contractual obligations toward the Claimant with respect to his substance abuse problem but that the Claimant failed to live up to his responsibilities. Under these

circumstances it cannot be said that the Carrier did not have the right to reinstate the original Rule G charge against the Claimant. The Board so finds.

With regard to the original charge dated April 25, 2008, the evidence is strong that the claimant violated Rule G and the related rules cited. Two Carrier witnesses testified that he showed symptoms of being under the influence of alcohol on April 18, 2008. In addition, he tested positive in two alcohol breath tests administered at least 20 minutes apart on the same date. The Individual Development & Personal Accountability Policy of the Carrier permits the assessment of dismissal as the discipline for a first offense of a Rule G violation, while recognizing the availability of the bypass option.

In the present case not only had the Claimant failed to comply with important terms of his Substance Abuse Treatment Plan extending over a period of months, but the EAP and the Carrier had made the extra effort to help the Claimant by permitting him to enroll in a Substance Abuse Treatment Plan a second time. Where there was substantial lack of compliance on the Claimant's part with the terms of his second Substance Abuse Treatment Plan, the Carrier was entitled to conclude that the Claimant was unwilling or unable to make the necessary effort to rehabilitate himself and to dismiss him from its employ.

The Claimant must realize that if he is ever to return to the workforce as a productive individual he must take control of his life and exercise the necessary self-discipline toward that end. He is a young man, and it is not too late for him to succeed if he shows the necessary willpower. There are probably individuals in the Organization who can advise the Claimant about where in the community he can receive the necessary guidance or counseling and, if necessary, treatment, to help him achieve his goals. He

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should seek their advice.

Many persons in the Claimant's situation have turned their situations around, and there is no reason to believe that the same cannot be true for the Claimant with the proper will and self-discipline on his part.

A W A R D

Claim denied.

O R D E R

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
January 20, 2011