

BEFORE PUBLIC LAW BOARD NO. 7544

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
SOO LINE RAILROAD COMPANY**

Case No. 1

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed upon Mr. B. Adams by letter dated December 6, 2007 in connection with an incident on October 29, 2007 and charges of alleged failure to comply with GCOR Rule 1.5 was arbitrary, capricious, excessive and in violation of the Agreement (System File D-08-570-001/8-00511).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Adams shall not be afforded the remedy prescribed by the parties in Rule 20(g).”

FINDINGS:

By notice dated November 2, 2007, the Claimant was directed to attend a formal hearing and investigation to develop the facts and place responsibility, if any, in connection with alleged violation of GCOR Rule 1.5 after the Claimant submitted to a drug and alcohol test, following a track collision on October 29, 2007, that yielded positive results. The hearing was conducted, after several postponements, on November 27, 2007. By letter dated December 6, 2007, the Claimant was informed that as a result of the hearing, he had been found guilty as charged and was being dismissed from the Carrier’s service. The Organization filed a claim on the Claimant’s behalf, challenging the Carrier’s decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the evidence in the transcript clearly supported the Carrier’s actions in this matter,

because the Claimant was afforded due process, because the evidence establishes that ultimate responsibility rests with the Claimant and his failure to follow the rules resulted in the incident, because sufficient substantial evidence shows that the Claimant is guilty as charged, and because the penalty imposed was appropriate. The Organization contends that the instant claim should be sustained in its entirety because this case involves a single momentary lapse of good judgment by a heretofore solid and conscientious employee, because the Claimant already has learned his lesson and paid dearly so it is clear that this act never would recur, because the Claimant was treated disparately in that he was not offered entry into the Carrier's EAP, and because the Carrier's decision to dismiss the Claimant was arbitrary, capricious, excessive, and in violation of the Agreement.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating GCOR Rule 1.5 when he tested positive on a drug and alcohol test on November 1, 2007, when he was involved in a track collision with a tamper. The Claimant admitted to the presentation of a positive sample for marijuana.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was admittedly guilty of a very serious offense. Given the Carrier's policies with respect to alcohol and drugs, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, this claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 8-31-2012

 - I dissent

ORGANIZATION MEMBER

DATED: 10/12/12