

BEFORE PUBLIC LAW BOARD NO. 5896

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 184

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant G. McNeal for failure to provide an adequate urine specimen in conjunction with an FRA short notice follow-up toxicological test on April 12, 2002.

FINDINGS:

By letter dated May 15, 2002, the Carrier notified the Claimant, G. McNeal, to appear for a formal investigation to determine the facts and place responsibility in connection with his failure to provide an adequate urine specimen in conjunction with an FRA short notice follow-up toxicological test on April 12, 2002. The Carrier charged the Claimant with insubordination.

The hearing took place on May 28, 2002. The Claimant was not present. On June 11, 2002, the Carrier notified the Claimant that he had been found guilty of insubordination, failing to provide an adequate urine specimen, and failing to follow the terms of his Bypass agreement. The Carrier assessed the Claimant the penalty of dismissal from the service of the Carrier effective June 11, 2002.

The Organization filed a claim on the Claimant's behalf, challenging the discipline. The Carrier denied the claim.

The Carrier argues that the Claimant's dismissal was justified in that he failed to live up to the terms of the Rule G Bypass process, which he voluntarily agreed to participate in when he previously tested positive for cocaine in November of 2001. The Carrier maintains that the

Claimant was given a second chance and was fully aware of his responsibility to abide by the terms and conditions of the Carrier substance abuse treatment plan. However, the Carrier points out that the Claimant failed to provide an adequate urine specimen on April 12, 2002, thereby violating the Bypass agreement. The Carrier argues that there was no legitimate medical explanation for his inability to provide an adequate urine specimen. The Carrier contends that the Claimant was properly charged, he was afforded a fair and impartial investigation, the record contains substantial and convincing evidence proving the Claimant guilty as charged, the discipline assessed the Claimant was reasonable, and the Claimant was timely notified of the assessment of discipline.

The Organization argues that the Carrier did not comply with the provisions of Rule 25 when it failed to provide the Claimant with prompt advance written notice of the exact offense of which the Claimant was accused, failed to provide the Claimant with a fair and impartial hearing, and failed to timely provide the Claimant with his discipline notice. The Organization maintains that the Claimant was deprived of the opportunity to be present and defend himself at the hearing. The Organization requests that the Claimant be reinstated to service with the Carrier.

The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. We find that the notice of investigation was received and that the Claimant was properly notified. There were no procedural irregularities that would require this claim to be sustained.

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 failing to provide an adequate urine specimen in conjunction with an FRA short notice follow-up

toxicological test on April 12, 2002. The record reveals that the Claimant was originally referred to the Employee Assistance Program (EAP) in November of 2001 after he had tested positive for cocaine on a random test taken on November 13, 2001. The Claimant was thereby offered the Rule G Bypass, and he agreed to a treatment plan and also agreed that he would be subject to testing by both federal regulation and Carrier policy.

The record is clear that the Claimant refused to submit a urine sample that was capable of being tested when he was ordered to do so. The Claimant did not present any medical reason for his inability to submit a urine sample. The Claimant was given water to drink and still did not provide an adequate sample.

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 record reveals that the Claimant was insubordinate as a result of his failure to provide an adequate urine specimen in conjunction with the toxicological test on April 12, 2002. Since the Claimant had previously been offered the Rule G Bypass, this Board cannot find that the Carrier's action in terminating the Claimant's employment this time was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: _____

7/16/03