

BEFORE PUBLIC LAW BOARD NO. 5896

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 187

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant R. P. Baelz for violating Rule G, Safety Rule 21, and applicable FRA and DOT regulations as a result of testing positive for a prohibited substance on a FHWA Short Notice Follow-Up toxicological test.

FINDINGS:

Claimant R. P. Baelz was employed by the Carrier as a Backhoe Operator during the relevant time period.

By letter dated March 21, 2002, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with his having tested positive for a prohibited substance on a FHWA Short Notice Follow-Up toxicological test on March 13, 2002. The Carrier charged the Claimant with violating Rule G, Safety Rule 21, and applicable FRA and DOT regulations. The Carrier informed the Claimant that the result of the March 13, 2002, test was the Claimant's second verified positive toxicological testing result within five years. The Carrier informed the Claimant that he was to be held out of service pending the result of the investigation.

After several postponements, the hearing took place on June 5, 2002. On June 14, 2002, the Carrier notified the Claimant that he had been found guilty of all charges and

was being dismissed from the service of the Carrier effective that date.

The parties being unable to resolve the issues, this matter comes 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 a second Rule G violation. The record reveals that the Claimant was found guilty of having cannabis in his system in 2001 and then methamphetamines in his system in 2002. The Claimant was given a second chance, and he failed to live up to the Carrier's rule requiring that he not be at work with illegal drugs in his system.

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.

Given the fact that this Claimant is a two-time drug offender, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 6/22/03