

BEFORE PUBLIC LAW BOARD NO. 5896

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 188

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant J. Shelton for conduct unbecoming an employee and violating Rule G and Safety Rule 21 as a result of testing positive for a prohibited substance on a FHWA Short-Notice Follow-Up toxicological test.

FINDINGS:

Claimant J. Shelton was employed by the Carrier as a Trackman during the relevant time period.

By letter dated September 16, 2001, 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 August 29, 2001. The Carrier charged the Claimant with conduct unbecoming an employee and violating Rule G and Safety Rule 21.

After several postponements, the hearing took place on February 21, 2002. On March 1, 2002, the Carrier notified the Claimant that the August 29, 2001, test result was the Claimant's second verified positive toxicological testing result within five years, that he had been found guilty of all charges, and that he was being dismissed from the service of the Carrier effective March 1, 2002.

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 the Carrier has proven that this Claimant has once again acted in violation of Carrier Rule G. The Claimant was found with cocaine in his system in August of 2001. The Claimant had previously been allowed to go through a Rule G waiver in 1999 after having been found with cocaine in his system at that time. As part of the Rule G waiver, the Claimant agreed to further testing and to keep his body clear of unlawful substances when he was at work. The Claimant was either unable or unwilling to live up to the requirements of being drug free when at work.

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 is a two-time drug offender. He had his first chance to return to work with treatment, and he has failed to remain clean. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment after being found with cocaine in his system at work on a second occasion. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 6/27/03