

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CANADIAN NATIONAL RAILWAY**

Case No. 35

STATEMENT OF CLAIM:

Claim of Welder Helper C.E. Byrum, Memphis TN, that the Carrier "... rescind and remove the dismissal discipline from the Claimant's record, and that he be reinstated to service and made whole in accordance with Rule 33(I,) for alleged violation of CN U.S. Operating Rules General Rule B; General Rule G; General Rule I, LIFE U.S. Safety Rule Book for Engineering Department Rules(s), on page 65, Substance and Alcohol Free Environment Policy and Guidelines, A, Preface, B, Policy and D, Subparagraph 5, for alleged refusal to take a random drug test, failure to follow supervisor's instructions, and abandonment and failure to protect his assignment as Welder Helper at Johnston Yard on January 26, 2006. Organization file number: SA 040706.0 CN-IC C.E. Byrum (Investigation). Carrier file number: IC 134 106 11.

FINDINGS:

By letter dated January 31, 2006, the Claimant was directed to attend a formal hearing and investigation to determine whether the Claimant had refused to take a random drug test, violated Carrier rules or supervisory instructions, and abandoned and failed to protect his assignment as a welder helper. After a postponement, the investigation was conducted on February 17, 2006. By letter dated March 7, 2006, the Claimant was informed that as a result of the hearing, he had been found guilty of violating Carrier rules and policies, and that he was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge him. The Carrier denied the claim.

The Carrier initially contends that, contrary to the Organization's argument,

significant discipline previously had been imposed upon the Claimant. The Carrier points out that the Claimant previously was discharged from the Carrier's service for a violation of Rule H.

The Carrier argues that the transcript demonstrates that the discipline was warranted and appropriate. Moreover, this case was properly handled in accordance with the guidelines of the parties' Agreement. The Carrier asserts that the Claimant admittedly left the property without authority, and with full knowledge that he was scheduled for a random drug and alcohol test. The Carrier maintains that this is considered a refusal to test, which is a violation of federal regulations, as well as Carrier rules and policies.

The Carrier points out that the Organization has not cited any rule that the Carrier violated in connection with the investigation and discipline at issue, and the Carrier argues that the Agreement has not been violated.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the Claimant's dismissal was unwarranted, unjust, excessive, and in violation of the Agreement. The Organization asserts that the record does not support the Carrier's decision to impose the most severe penalty of discharge. The Organization argues that the Claimant was honest and forthcoming at the investigation. The Organization maintains that this incident requires a full, fair, and thorough investigation of all elements that may have contributed to the Claimant's not taking the drug test, and the Organization insists that it is ready to cooperate in

developing reasonable efforts to safeguard against another such event. The Organization insists that the decision to dismiss the Claimant was neither fair nor reasonable.

The Organization emphasizes that it is well-established in the railroad industry that the purpose of administering discipline is not to inflict punishment, but rather to rehabilitate, correct, and guide employees in the proper performance of their duties. The Organization points out that Board Awards consistently have held that the severity of the punishment must be reasonably related to the gravity of the offense.

The Organization contends that in the instant case, the disciplinary penalty is improper, arbitrary, and harsh in light of the nature of the incident and its non-progressive nature of the discipline. The Organization points out that the Claimant was dismissed well before the Carrier applied all of the progressive steps. Clearly, the Claimant was not given the chance to rehabilitate. The Organization emphasizes that the Board repeatedly has recognized that the principle of progressive discipline is essential in the railroad industry.

The Organization asserts that a review of the record demonstrates that the discipline imposed cannot be validly upheld. The Organization therefore contends that the instant claim should be sustained in its entirety.

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 both Carrier and federal rules when he refused to take a random drug test and failed to follow the supervisor's instructions that he take that test. The Claimant was also properly found guilty of abandonment and failure to protect his job assignment on January 26, 2006.


The record reveals that the Claimant was told that he had to take a random drug test; and when he reported to the supervisor's office and learned what he was supposed to do, he left without taking the test. The Claimant's action not only violated Carrier rules, but also some of the federal regulations requiring testing of railroad employees.

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.

This Board is not unmindful of the lengthy seniority that has been accumulated by this Claimant. However, this was his second dismissal; he had been previously dismissed in 1997 for abandoning his assignment. Given that previous background and the seriousness of the offenses of which the Claimant was found guilty in this case, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 7-13-07



CARRIER MEMBER

DATED: July 13, 2007