

PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

**Case No.: 413
Award No.: 413**

vs.

ILLINOIS CENTRAL RAILROAD COMPANY

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

- 1. The dismissal imposed upon Mr. K. Kincaid for alleged violation of USOR Rule G - Drugs and Alcohol and Substance and Alcohol Free Environment (S.A.F.E.) Policy and Guidelines was on the basis of unproven charges arbitrary, excessive and in violation of the Agreement (System File 18 11 05 (029)/IC-BMWED-2018-00055 ICE).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant K. Kincaid shall have his record cleared of the charges leveled against him and shall be compensated for all wage loss suffered.”**

FINDINGS:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 6043 has jurisdiction over the parties and the dispute involved herein.

Claimant established and held seniority within the Carrier’s Maintenance of Way Department and at the time of the events giving rise to this dispute, Claimant was working as an assistant foreman.

On September 10, 2018, Claimant was subject to a random (DOT) FRA Drug and Alcohol Screen upon his reporting for duty in Jackson, Mississippi. Upon administration of the breath alcohol test at approximately 0718 hours, Claimant produced a result of 0.137, indicating the presence of alcohol in his system. A follow-up test was administered at approximately 0743 hours, at which Claimant produced a result of 0.140. As a result of Claimant testing positive for the presence of alcohol in his system, Claimant was removed from service pending the results of the alcohol screen and transported home.

On September 10, 2018, Claimant was given notice of an investigation in connection with the following charge:

The investigation is being held to develop the facts and to determine whether you violated any Company rules, regulations and/or policies in connection with an incident that occurred in which you allegedly tested positive for alcohol at a confirmed concentration of 0.140 during an[sic] DOT random test on September 10, 2018 at 0715 hours at 2662 North Mill Street, Jackson, MS and whether you violated any Company rules, regulations and/or policies in connection with the incident.

After a formal investigation on October 18, 2018, Claimant was found in violation of Rule G: Drugs & Alcohol, Substance and Alcohol Free Environment (S.A.F.E.) Policy and Guidelines and was dismissed from the Carrier's service.

The Carrier contends that the credible testimony and substantial evidence contained in the investigation transcript firmly established that Claimant was proven to be in violation of USOR Rule G-Drugs and Alcohol, and SAFE Policy: Substance and Alcohol Free Environment. The Carrier contends that there is no dispute as to the facts of the case. USOR General Rule G-Drugs and Alcohol provides, in part:

While on duty or on company property, the use or possession of intoxicants, over-the counter, or prescription drugs, narcotics, controlled substances, or medication that may adversely affect safe performance is prohibited. Employees must not possess, sell, use, or have in their bodily fluids any illegal drug or controlled substance while on or off duty.

The Carrier contends that its policy regarding the prohibition on alcohol and prohibited substances was in effect at the time of the incident herein and is a means to ensure the safety of all in contact with the railroad. The intent is to prevent an employee from being impaired in the performance of his duties.

The Carrier contends that Claimant produced a positive, or nonnegative test. The Carrier contends that Claimant tried to say that he had used mouthwash which affected the test result but the Carrier's witness said mouthwash would not produce a result consistent with the result of his tests.

The Carrier contends that Claimant received a fair and impartial hearing.

The Carrier contends that the incident is properly classified as a Level 4 Rule Violation which is described as conduct that is extremely serious enough to result in immediate termination. The Carrier contends that based on the nature of the violation and Claimant's past disciplinary record, the penalty assessed in the instant case is appropriate and in accordance with progressive discipline.

The Carrier contends that Claimant is not a candidate for the Carrier's SAFE policy because he failed to obtain treatment prior to being found in violation of the Drug and Alcohol Policy.

The Organization contends that the Carrier failed to meet its burden of proof with respect to the charges. The Organization contends that there is no evidence that Claimant willfully intended to violate the charged rules. The Organization points out that Claimant testified that he believed that the tests administered were inaccurate and produced false positives as a result of his having used mouthwash prior to providing the two alcohol breathalyzer tests.

The Organization contends that once Claimant realized his alcohol use was affecting his railroad career, he did everything in his power to address the issue and enrolled in the Carrier's EAP. The Organization contends that Claimant was a veteran employee who accrued eight years of service with the Carrier and that he had a good work record with no prior discipline. The Organization contends that the Carrier has offered other employees "second chance waivers" for Drug and Alcohol violations.

The Organization contends that the penalty of dismissal was excessive, as this was Claimant's first offense.

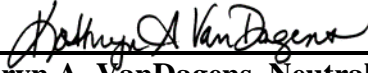
The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant.

The Board has carefully reviewed the record in this case. We find that the Carrier has produced substantial evidence of Claimant's violation of its Rules. Although the Organization argued that the test results were rendered inaccurate by Claimant's use of mouthwash prior to the tests, the Carrier's evidence refuted that assertion. Furthermore, Claimant's actions after the test demonstrate that he knew that he was in violation of the Carrier's rule.

In light of the clear evidence showing Claimant's violation, this Board finds no reason to disturb the Carrier's penalty of dismissal. The Carrier has adequately shown why it did not offer this Claimant a "second chance" after he reported to work under the influence of alcohol. The safe operation of the railroads is paramount, and we cannot say that the penalty was excessive under all the circumstances of this case.

AWARD

Claim denied.



Kathryn A. VanDagens, Neutral Member



Ross Glorioso, Organization Member



John Ingoldsby, Carrier Member

Dated: August 12, 2021