

**BEFORE PUBLIC LAW BOARD NO. 6043**

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION  
and  
CANADIAN NATIONAL RAILWAY  
ILLINOIS CENTRAL RAILROAD**

**Case No. 47**

**STATEMENT OF CLAIM:**

Claim of Track Inspector V.W. Buford, Memphis TN, that his "... personal record be cleared of the charge immediately and that he be made whole in accordance with Rule 33(i)" for violation of U.S. Operating Rules General Rule G, Substance and Alcohol Free Environment Policy and Guidelines and Agreement to Undergo Toxicological Testing, signed by Mr. Buford on July 12, 2004. Organization File Number: S A120506.0 CN-IC V.W. Buford (Investigation). Carrier File Number IC 134 106 29.

**FINDINGS:**

By notice dated August 31, 2006, the Claimant was directed to attend a formal hearing and investigation to determine whether the Claimant violated U.S. Operating Rule G, Drugs and Alcohol, or any other Carrier rules or policies, when the Claimant tested positive for illegal or controlled substances while working as a Track Inspector in Memphis, Tennessee, on August 22, 2006. After several postponements, the hearing was conducted on October 13, 2006. By letter dated October 26, 2006, the Claimant was informed that as a result of the hearing, he was found guilty of violating U.S. Operating Rule G, Substance and Alcohol Free Environment (SAFE) Policy and Guidelines, and the Agreement to Undergo Toxicological Testing that the Claimant signed on July 12, 2004. The letter further informed the Claimant that he was being dismissed from the Carrier's service. The Organization thereafter filed a claim on behalf of the Claimant, challenging

the Carrier's decision to discharge him. The Carrier denied the claim.

The Carrier initially contends that there is no validity to the Organization's position. As for the Claimant's absence from the investigation, the Carrier asserts that the investigation notices were sent by certified mail to the Claimant's home address of record. The Carrier argues that the Claimant was fully advised of the time and place of the investigation, and he had every opportunity to attend and testify.

With regard to the Organization's position that the Claimant's due process rights were violated because the Claimant was not present at the investigation, the Claimant was not afforded the opportunity to testify in his own defense, and the Organization unsuccessfully sought a postponement due to the Claimant's inability to attend the investigation, the Carrier emphasizes that the Claimant was given advance notice by certified mail of the investigation. Moreover, the investigation notice informed the Claimant of his right to representation and his right to produce witnesses on his behalf. The Carrier further asserts that on at least one occasion, it agreed to the Organization's request to postpone the investigation.

The Carrier maintains that the Claimant had previously admitted to being in violation of Rule G while working as a track inspector on April 6, 2004. The Carrier points out that among the return-to-work conditions that the Claimant and his representative agreed to was the Claimant's commitment to remain substance free for the remainder of his career. The Carrier emphasizes that the transcript clearly shows that on August 22, 2006, the Claimant again was in violation of Rule G.

The Carrier asserts that the Agreement has not been violated. The Carrier

ultimately contends that the instant claim is without merit and should be dismissed in its entirety.

The Organization initially contends that the Carrier violated the Claimant's due process right to a fair and impartial hearing. The Organization asserts that the record demonstrates that the investigation was held in the Claimant's absence, the Claimant was not afforded the opportunity to testify in his own defense, and the Organization asked for a postponement due to the Claimant's being unable to attend the investigation, but the hearing officer denied this request. The Organization argues that there can be no question that the Carrier's decision to proceed with the hearing in the Claimant's absence clearly violated the Claimant's due process rights. The Organization maintains that the Carrier's decision to dismiss the Claimant therefore should be vitiated.

The Organization emphasizes that an objective evaluation of the record conclusively establishes that the discipline imposed cannot be validly upheld. The Organization ultimately 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 procedural arguments raised by the Organization, and we find them to be without merit. The record reveals that the Claimant was granted two postponements, and he still failed to show for the hearing. This Board finds that there was no predetermined investigation on the part of the hearing officer and that the Claimant's right to a due process hearing were protected.

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 in 2004, the Claimant was guilty of his first Rule G violation, and he agreed to remain clean from drugs and alcohol for the balance of his career, and he also agreed to random drug testing. Consequently, the Claimant had his second chance and he failed to live up to it.

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 Claimant was guilty of his second Rule G violation and this Board cannot find that the Carrier acted unreasonably, arbitrarily or capriciously when it terminated his employment, despite the fact of his lengthy seniority. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**ORGANIZATION MEMBER**

  
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**CARRIER MEMBER**

**DATED:** 4-1-08

**DATED:** April 1, 2008