

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 5

STATEMENT OF CLAIM:

Appeal of Claimant R. C. Barkley's dismissal from the service of the Carrier, effective November 18, 1999.

FINDINGS:

Claimant R. C. Barkley was employed by the Carrier as a Class A machine operator at the time of the claim.

On October 25, 1999, the Carrier notified the Claimant to appear for a formal investigation to determine his responsibility, if any, in connection with the charge that he violated CSXT Safety Rule 21 when, on October 8, 1999, he tested positive for cannabinoids (metabolites of marijuana). This violation occurred during the period that the Claimant was participating in a Carrier-approved five-year rehabilitation and after-care program for a previous Rule G violation that took place on March 13, 1995, thereby violating the conditions of the rehabilitation program.

The hearing commenced on November 3, 1999. On November 18, 1999, the Carrier notified the Claimant that he was found guilty of all charges and was being assessed discipline of dismissal in all capacities effective November 18, 1999.

The Organization filed a claim on behalf of the Claimant challenging the dismissal.

The parties being unable to resolve the issue, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, as well as the documents that were tendered as part of the drug testing, and we must find that the Carrier has failed to meet its burden of proof that the Claimant's drug test in October of 1999 met the requirements to sustain a discharge.

The record reveals that the test form contains a social security number that is not that of the Claimant. Moreover, there are no records reflecting the actual result of the test. The only indication in the file that the Claimant failed the drug test was a letter dated October 15, 1999, to Stephen L. Goldman, M.D., from Joseph A. Thomasino, M.D., a medical review officer. That letter indicates that the Claimant's urine test was positive for marijuana metabolites.

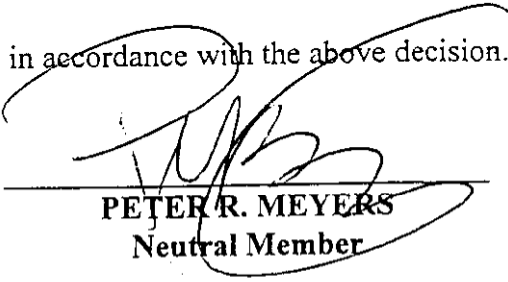
This Board is aware that the Claimant had previously failed a drug test in 1995 and was back to work under an agreement whereby he agreed to remain drug-free and submit himself to regular testing. However, the Carrier still must abide by the usual rules with respect to drug tests and make sure that all of the documentation is in order. The Claimant in this case has been with the Carrier for more than twenty years. This Carrier must submit more complete documentation to support its action in discharging the Claimant in order for the discharge to be upheld. This Claimant had remained drug-free for four and one-half years out of the five years set forth in his Rule G Waiver signed in April of 1995. It may be that he failed to remain drug-free in October of 1999; however, the records submitted in this case do not make it that clear, or at least clear enough to sustain the discharge of a twenty-year employee.

This Board orders that the Claimant be reinstated with back pay and placed back on the Rule G Waiver for another five-year period. The Claimant should be told that the rules are the same as they were in 1995 and any failure to comply with the conditions of the agreement will

result in his immediate termination.

AWARD:

The claim is sustained in accordance with the above decision.



PETER R. MEYERS
Neutral Member