

**BEFORE PUBLIC LAW BOARD NO. 6239**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

and

**CSX TRANSPORTATION**

**Case No. 1**

**STATEMENT OF CLAIM:**

Appeal of Claimant R. P. Rogers' dismissal from the service of the Carrier, effective February 19, 1999.

**FINDINGS:**

Claimant R. P. Rogers was employed by the Carrier as a machine operator at the time of the claim.

On August 12, 1996, the Carrier notified the Claimant to either attend the Carrier's Employee Assistance Program (EAP) and meet specific conditions of that program or to appear for a formal investigation into the charge that he underwent a toxicological test on July 29, 1996, with the result of the test being positive for cannabinoids and cocaine metabolites. The Claimant was charged with violating Rule G, Safety Rule 21. The Claimant chose to participate in the EAP with the understanding that the hearing would be held in abeyance; the Claimant would be held out of service due to "disability" until approved to return to service; and that any reported non-compliance with the Claimant's after-care plan within five years of his return to service would result in a hearing on the Rule G, Safety Rule 21 charge.

After having returned to service, the Claimant underwent a random toxicological test on December 22, 1998, and tested positive for cocaine metabolites. On January 6, 1999, the Carrier notified the Claimant to appear for a formal investigation into his failure to comply with the

conditions of the EAP program and for again testing positive on the follow-up drug test taken on December 22, 1998, in violation of Rule 21.

After two postponements, the hearing took place on February 3, 1999. The Claimant was found guilty of the charge and assessed the discipline of dismissal from the service of the Carrier effective February 19, 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.

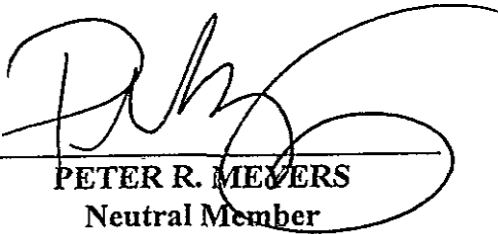
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant failed to follow through with the recommendations of his EAP manager and again tested positive on a follow-up drug test on December 22, 1998.

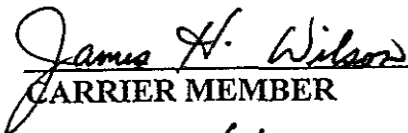
The record reveals that the Claimant had previously been found guilty of a Rule G violation and been placed on a Rule G waiver agreement for a period of five years. On December 29, 1998, within the five-year period, the Claimant was found to be positive for cocaine and other illicit drugs.


This Board cannot find that the action taken by the Carrier in terminating the Claimant was unreasonable, arbitrary, or capricious. The Claimant knew his responsibilities under the Rule G waiver and failed to live up to his promises. Therefore, this Board finds that the Carrier did not violate the agreement by terminating the Claimant as a result of this second positive test in December of 1998. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.

  
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PETER R. MEYERS  
Neutral Member

  
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CARRIER MEMBER  
Dated: 9/10/99

  
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ORGANIZATION MEMBER  
Dated: 10-12-99