

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 10

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant B. E. Godfrey as a result of investigation held October 12, 2000, in connection with Claimant's alleged violation of Rule G and Carrier Safe Way Rule 21.

FINDINGS:

Claimant B. E. Godfrey was employed by the Carrier as a Class A operator at the time of this claim.

On June 28, 2000, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with his having violated Rule G and Carrier Safe Way Rule 21 when he tested positive for cocaine metabolites on June 12, 2000. The Carrier charged the Claimant with failing to comply with the conditions of the Carrier-approved rehabilitation and after-care program (EAP treatment) that the Claimant was participating in at the time of this incident as this was the Claimant's second verified positive toxicological testing result within five years since the Claimant's return to service.

After several postponements, the hearing took place on October 12, 2000. On October 30, 2000, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of dismissal from all services.

The Organization filed a claim challenging the Claimant's dismissal.

The parties being unable to resolve the issues, 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 the Rule G waiver that he signed in May of 1998. The record reveals that the Claimant tested positive for cocaine in May of 1998 and signed a Rule G waiver agreeing to enroll in an EAP program. At the same time, he agreed that any reported noncompliance in the next five years would result in a Rule G hearing. That bypass was executed on June 12, 1998.

The record in this case makes it clear that the Claimant tested positive for a second time on June 12, 2000. Testing positive for cocaine is clearly a noncompliance with the after-care program as set forth in Rule G. This Board finds that the Claimant was given his second chance in 1998, and he failed to live up to the agreement.

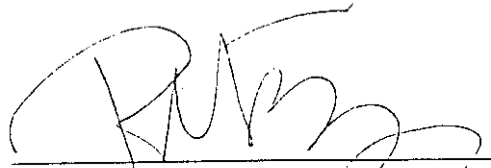
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The Carrier chose to discharge the Claimant after this second positive cocaine test. This Board finds that that decision was not unreasonable, arbitrary, or capricious even though the Claimant had subsequently been treated at a treatment center and has a letter in the file indicating that he had successfully completed that treatment and is currently in after-care. There is nothing that requires the Carrier to give this Claimant a third chance.

For all of the above reasons, the claim must be denied.

AWARD:

The claim is denied



PETER R. MEYERS
Neutral Member