

**BEFORE PUBLIC LAW BOARD NO. 6239**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION**

**Case No. 59**

**STATEMENT OF CLAIM:**

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Appeal of the dismissal issued to Claimant R. L. Ball as a result of investigation held on April 22, 2004, in regards to Claimant's violation of Carrier Rule G and/or Carrier Drug Alcohol Use Policy and FRA Regulations (49 CFR 219.102).

**FINDINGS:**

The Claimant was employed by the Carrier as a track inspector at the time of this claim.

On February 12, 2004, the Carrier issued a letter to the Claimant informing him to appear for a formal investigation to determine the facts and place responsibility in connection with his having tested positive for cocaine metabolites after submitting to a follow-up toxicological test on February 4, 2004. The Carrier also informed the Claimant that the February 4, 2004, occurrence was his second verified positive toxicological testing result, or confirmed positive breath alcohol test, or Rule G violation, within five years. The Carrier charged the Claimant with a violation of Rule G and/or Carrier Drug Alcohol Use Policy and FRA Regulations (49 CFR 219.102).

After several postponements, the hearing took place on April 22, 2004. On

May 3, 2004, the Carrier notified the Claimant that he had been found guilty of all charges and was being issued discipline of dismissal, effective immediately.

The parties being unable to resolve their dispute, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case and we find that there was sufficient evidence in the record to support the finding that the Claimant tested positive for cocaine metabolites during a follow-up toxicological test on February 4, 2004. The record reveals that this was the Claimant's second verified positive toxicological testing result or confirmed positive breath alcohol test or Rule G violation within five years. The Claimant's earlier wrongdoing had taken place in 2001 and resulted in a conditional reinstatement of the Claimant.

Once of the conditions of the Claimant's reinstatement prohibited:

Any proven failure of Mr. Ball to comply with the requirement of his treatment plan or a proven violation of Rule G and/or CSX Safeway Rule 21, or either of their successors, within the period of time stated in 2 above will result in immediate termination.

The period of compliance set forth in the agreement was a period of five years. This most recent incident in February of 2004 fell within the five-year period outlined in the return to work 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 actions to have been unreasonable, arbitrary, or

capricious.

The Claimant in this case had previously been given an opportunity to reform his behavior and return to work as long as he remained free of alcohol and drugs. The Claimant failed to live up to his agreement and tested positive for a second time. This Board cannot find that the Carrier's action in terminating the Claimant was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.



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**PETER R. MEYERS**  
Neutral Member

**Dated:** 3/18/05