

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 62

STATEMENT OF CLAIM:

Appeal of the dismissal issued to Claimant Michael D. Phelan as a result of investigation held on August 9, 2005, in regards to Claimant's noncompliance with the requirements of Carrier Operating Rules - General Rule G and Carrier Safe Way - General Rule 21, as well as Carrier's Transportation Substance Abuse Treatment Plan signed by the Claimant on March 31, 2003.

FINDINGS:

The Claimant was employed by the Carrier as a vehicle operator at the time of this claim.

On July 26, 2005, the Carrier directed the Claimant to participate in a short notice follow-up breath alcohol toxicological test as required by the conditions of the Employee Assistance Program in which the Claimant was enrolled. The Claimant completed the breath toxicological test in Pittsfield, Massachusetts, which resulted in a positive breath alcohol level of 0.023 gms/210 liters.

On July 27, 2005, the Carrier issued a formal notice informing the Claimant to appear for a formal investigation into the matter and charging the Claimant with violation of Carrier Operating Rules - General Rule G and Carrier Safe Way - General Rule 21. Additionally, the Carrier informed the Claimant that it was

reinstating his original Rule G and Carrier Drug/Alcohol Use Policy charge dated March 27, 2003, as a result of his second positive test result within the last five years and non-compliance with his after-care rehabilitation plan entered into on March 31, 2003. The Claimant was withheld from service pending the results of the formal investigation.

The hearing took place on August 9, 2005. On that same date, the Carrier notified the Claimant that he had been found guilty of all charges and was being dismissed from the service of the Carrier.

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 is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to live up to the terms of his Rule G Option Bypass that he signed on March 31, 2003. In 2003, the Claimant had been charged with a Rule G violation and was offered the Rule G, C-2 Option Bypass. At that time, the Claimant entered into an agreement where he agreed that any reported non-compliance with his after-care plan within five years of his return to service would most likely result in his discharge. The Claimant had previously tested positive for an improper substance on March 27, 2003.

The record reveals that the Claimant in this case tested positive for alcohol on July 26, 2005. The Claimant was on duty at the time, and he testified that he was familiar with General Rule G, prohibiting him from having alcohol or

intoxicants in his body when he was at work. The Claimant also admitted that his Rule G Bypass Agreement stated that any reported noncompliance with his after-care plan within five years of his return to service would result in a hearing on the Rule G charge and more serious discipline.

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 Board recognizes that the Claimant has served the Carrier for over twenty-nine years. Unfortunately, the Claimant, who tested positive in 2003, agreed that if he were tested positive in the next five years, he would be disciplined and probably discharged for that offense. The Claimant did not live up to his agreement and is now a two-time offender under Rule G. In addition, the Claimant's personnel record reveals that in 1994, this Claimant was charged with conduct unbecoming an employee and agreed to be suspended for nine days.

This Board cannot find that the Carrier's action in terminating the Claimant was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.