

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 66

STATEMENT OF CLAIM:

Appeal of the dismissal issued to Claimant W. Wallace as a result of investigation held on November 7, 2006, in regards to the Claimant's second Operating Rule G violation within five years.

FINDINGS:

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

On April 6, 2005, the Claimant agreed to the Rule G, C-2 option of enrolling in and abiding by the terms of the Carrier's Employee Assistance Program (EAP) as a result of having been charged on March 28, 2005, with a Rule G and/or Safety Rule 21 violation for testing positive for cocaine metabolites on March 16, 2005. A condition of enrolling in the Carrier's EAP program is that any report of non-compliance with the Claimant's after-care plan within five years of his return to service would result in a hearing on the original Rule G/Safety Rule 21 charge. On October 26, 2005, the Claimant also signed a Substance Abuse Treatment contract.

On July 7, 2006, the Claimant underwent a company return-to-work toxicological test and tested positive a second time for cocaine metabolites,

thereby violating the terms of his after-care plan and subjecting himself to being charged with his original violation of Rule G and/or Safety Rule 21 and violation of his Substance Abuse Treatment contract, as well as charges brought forth by the Carrier for the second positive test result.

On July 31, 2006, the Carrier notified the Claimant to appear for a formal investigation as a result of having tested positive a second time for cocaine metabolites on July 7, 2006. The Carrier charged the Claimant with violation of Carrier Transportation Operating Rules – Rule G and Carrier Safeway General Safety Rules – Substance Abuse Rule GS-2 and reinstated the Claimant's original Rule G and/or Safety Rule 21 charge dated March 28, 2005, as a result of having violated the terms of his after-care plan. The Claimant was withheld from service pending the results of the formal investigation.

After several postponements, the hearing took place on November 7, 2006. The Claimant was not present for the hearing. On November 20, 2006, the Carrier notified the Claimant that he had been found to have violated Rule G twice within a five-year period and was being assessed the discipline of termination of employment with the Carrier, including the removal of his name from all seniority rosters.

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 reporting for duty while being under the influence of cocaine in violation of Carrier Rule G. The record reveals that the Claimant had previously been found guilty of a Rule G violation in March of 2005 and, at that time, he had been allowed to enter into the Rule G, C-2 option (the bypass) in lieu of the holding of an investigation. At that time, the Claimant agreed that he would enroll and participate in an approved rehabilitation program and that any future reported non-compliance with his after-care plan within five years of his return to service would result in a hearing on the Rule G/Safety Rule 21 charge. As part of the Claimant's substance abuse treatment plan, he agreed to abstain from all use of forms of alcohol and mind-altering substances at all times.

The record reveals that on or about July 7, 2006, when the Claimant took a return-to-work examination, he tested positive for cocaine metabolites in his system. That positive test violated the Carrier's rules, as well as the Substance Abuse Treatment contract that he signed with the Carrier on October 26, 2005. This Board finds that the Carrier properly found that the Claimant violated Rule G and subjected himself to disciplinary action.

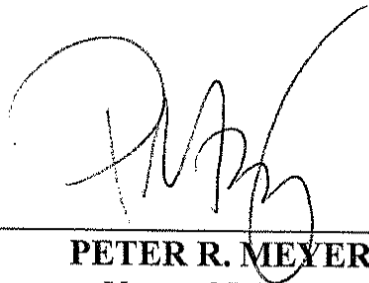
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

This is a second Rule G violation. The Claimant made an agreement with

the Carrier after his first Rule G violation that he would abstain from the use of all forms of alcohol and all mind-altering substances. The Claimant failed to live up to his agreement and, once again, violated the Carrier's rules. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it decided to terminate the Claimant's employment after the second Rule G violation. Therefore, the claim will be denied.

AWARD:

The claim is denied.



A handwritten signature in black ink, appearing to read 'P. Meyers', is written over a horizontal line.

PETER R. MEYERS
Neutral Member

Dated:

6/12/07