

PUBLIC LAW BOARD NO. 6920

PARTIES)	BROTHERHOOD OF MAINTENANCE OF WAY
)	EMPLOYEES DIVISION - IBT RAIL CONFERENCE
)	
TO)	
)	
DISPUTE)	THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed upon Mr. A. McGee, by letter dated December 21, 2018, for alleged violation of GCOR Rule 1.5 - Drugs and Alcohol and The Kansas City Southern Railway Company’s Drug and Alcohol Free Workplace Policy was severe, harsh and an abuse of Carrier discretion (System File 18 12 21/2018-0653 GAT).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. McGee shall now ‘. . . be returned to work on a leniency reinstatement after the proper rehabilitation.’ (Employees’ Exhibit ‘A-2’).”

FINDINGS:

Upon consideration of the entire record and all of the evidence, the Board finds 1) the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended; 2) PLB 6920 is duly constituted by Agreement and has jurisdiction over this dispute; and 3) the parties received due notice of the hearing.

Claimant was a machine operator with approximately four (4) years of service and stationed in Mexico, Missouri. Over the years Claimant has endured insomnia, anxiety, asthma, hypothyroidism, carpal tunnel flareups and migraine headaches. To cope with these experiences he has consumed prescribed medications Ambien, Lorazepam, Albuterol, Synthroid and PRN Hydrocodone. Prior to the incident herein Claimant had not tested positive for any controlled substance nor been assessed discipline by the Carrier.

On November 23, 2018, Claimant developed a severe headache while celebrating Thanksgiving Day with his girlfriend’s family. Claimant requested a Tylenol or Advil; his girlfriend provided him with two (2) prescribed medication pills. She did not advise Claimant that the pills were prescribed medications and Claimant did not inquire.

On November 28, 2018, Claimant was subjected to a random drug and alcohol test required by Federal Railroad Administration (“FRA”) regulations at 49 C.F.R. Part 219. The Carrier received notice on December 3, 2018, that Claimant scored a positive test for oxymorphone/oxycodone

whereupon he was removed from service. Claimant contacted the Medical Manager and obtained a referral to a drug rehabilitation program. Claimant completed ten (10) hours of drug education and returned to work.

The KCS notified Claimant of a formal investigation which convened on December 13, 2018, to determine his responsibility, if any, for possible violations of GCOR 1.5 - Drugs and Alcohol (controlled substance within self) and the Carrier's Drug and Alcohol Free Workplace Policy in connection with his FRA random drug test. Following the investigation, KCS informed Claimant on December 31, 2018, he was dismissed from service based on the charged violations.

The Organization appealed Claimant's dismissal noting he "[pled] guilty of the offenses for which he was charged and perhaps [is] deserving of some discipline[.]" The claim was handled in the usual manner, up to and including conference held on October 4, 2019, without resolution. The claim is properly before the Board for a final decision.

Undisputed is that Claimant tested positive for an opioid and pled guilty of the charged offenses. That is, Claimant violated GCOR 1.5 - Drugs and Alcohol; this rule violation is a dismissal infraction under the KCS' Discipline Policy. The Organization maintains that dismissal is punitive because Claimant cooperated in the process, expressed remorse, affirmed this incident will not be repeated, acknowledged he exercised bad judgement, obtained help through the employee assistance program, completed 10 hours of rehabilitation training and returned to duty.

BMWE recognizes that substance abuse is a major health problem. It notes that the Carrier's Drug and Alcohol Free Workplace Policy recognizes "alcohol and drug abuse and addiction are treatable illnesses" and "early intervention and support improve the success of rehabilitation." Since Claimant completed early intervention and treatment, the Organization urges compassion and leniency with the dismissal rescinded and Claimant reinstated to service.

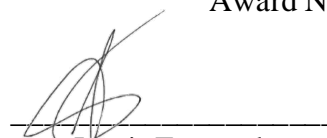
This tribunal's authority to review, reduce and rescind discipline including dismissal is well-established in PLB 6920 - Awards 5, 19, 32, 49, 106, and 116. On-property decisions PLB 6935 - Award 118 and PLB 6355 - Award 11 reinstated first-time offenders testing positive for controlled substances. Claimant is a first-time offender. In the stand-alone circumstances of this claim, the Board finds Claimant's dismissal is severe and punitive. In lieu of dismissal, the Board reinstates Claimant without backpay and subject to Claimant executing the Carrier's offered Rule G Reinstatement Agreement and Release, which is designed to rehabilitate and prevent future violations of GCOR 1.5 - Drugs and Alcohol and the Carrier's Drug and Alcohol Workplace Free Policy. The Carrier has thirty (30) days to comply with this order.

AWARD: Claim sustained in accordance with the findings.

Patrick Halter /s/
Patrick Halter
Chair - Neutral Member



John Schlismann
Employee Member



Louis Fernandez
Carrier Member

Date: *November 15, 2021*