

AWARD NO. 413
Case No. 413

Organization File No. D01901118
Carrier File No. 18-96575

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) IBT RAIL CONFERENCE
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

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

1. The Carrier’s discipline (dismissal) of Mr. J. Holt, by letter dated February 16, 2018, in connection with allegations that he violated CSX Transportation Rule 106 was inappropriate (System File D01901118/18-96575 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Holt must have all mention of this matter cleared from his record, be immediately returned to service with all rights and benefits unimpaired and be compensated for all loss suffered (including but not limited to those losses referenced in the February 27, 2018 claim letter).”

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Claimant, J. Holt, had been employed by the Carrier since October 15, 2001. At all times relevant herein, Claimant was working as a B&B Foreman on Team 6X75. This case involves an alleged violation of the Carrier’s Drug and Alcohol Policy, CSX Transportation Operating Rule 106.1, known in the industry as “Rule G”. It provides that the “possession or use of a drug,

narcotic, or other substance that affects alertness, coordination, reaction, response, or safety is prohibited both on and off duty.” On February 16, 2018, following an investigation, the Carrier found Claimant had violated Rule 106.1 when his follow-up toxicological testing on June 28, 2017 was positive for cocaine. The Carrier dismissed him from service.

This case arises in the context of a previous Rule G charge against Claimant. On August 14, 2013, Claimant was pulled over for speeding by local law enforcement outside of Covington, Virginia. Police found Claimant in possession of marijuana and drug paraphernalia. Because the incident was Claimant’s first drug-related offense in a five-year period, he was eligible to participate in the Rule G C-2 option, or bypass, under the parties’ Agreement.

Claimant signed the bypass form on September 27, 2013, agreeing to contact a Carrier Employee Assistance Program (EAP) Counselor within five days to enroll in an approved rehabilitation program. This bypass option also held Claimant to the condition that should he be reported for non-compliance with his after-care plan within five years of his return to service, he would be required to undergo a hearing on the Rule G charge.

The facts of the instant matter are undisputed. On June 28, 2017, Claimant underwent a Carrier short notice follow-up drug test as part of the follow-up program designed by his EAP Counselor under the bypass agreement. The Carrier was notified on July 7, 2017 that Claimant’s drug test came back positive for cocaine metabolites.

Drug possession and use is prohibited under Rule 106.1 for both on and off duty employees. Claimant admitted to violating his September 2013 bypass agreement within the five-year period, stating that he drank too much and “made a bad decision.” Claimant also affirmatively testified that he violated Rule 106.1 and that he was on Carrier property with illegal substances in his system.

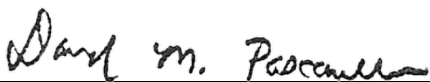
Though the Organization maintains that there is no evidence proper testing procedures were followed, the Carrier states that there are no indications the test was administered incorrectly. Claimant also admitted to this positive drug test, admitted to having an illegal substance in his system at the relevant time, and admitted to violating the 2013 bypass agreement. These admissions, standing alone, are sufficient to satisfy the Carrier's burden of proof by substantial evidence.

Regarding the discipline assessed, it is well established in this industry that a second Rule G violation while the employee is subject to the requirements of a bypass agreement is a dischargeable offense. Given the serious, even potentially fatal, consequences that can result from employees' impairment, we cannot find that the Carrier's decision to dismiss Claimant for a positive drug test and second Rule G violation within five years was arbitrary or unwarranted. As such, we must deny the claim.

AWARD: Claim denied.



Jacalyn J. Zimmerman
Neutral Member



David M. Pascarella
Employee Member



John Nilon
Carrier Member

Dated: June 25, 2021