

**PUBLIC LAW BOARD NO. 7529
CASE NO. 105
AWARD NO. 105**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	PARTIES TO THE
)	DISPUTE
vs.)	
)	
CSX TRANSPORTATION, INC.)	
(Carrier File: 2015-192447)		

STATEMENT OF CLAIM:

“It is my desire to process the discipline assessed to me and to obtain a decision as quickly as possible. Therefore, I hereby elect to have said discipline submitted to Special Board of Adjustment No. 7529. In so electing, I understand that the Neutral Member of Special Board of Adjustment 7529 will base his decision on the transcript of my hearing, my prior service record, the notice of my hearing, the notice of discipline and Rule 25 of the Maintenance of Way Agreement.”

FINDINGS:

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Agreement, as amended, that this Board is duly constituted by Agreement dated February 15, 2012, that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings. The parties have been unable to resolve this issue and they have placed the issue before this Board for adjudication.

After a thorough review of the record, and a hearing on this matter held on September 26, 2016, the Board concludes that the Claimant in this case was a Maintenance of Way employee on the dates in question in this claim.

The Claimant had over 10 years of seniority at the time of the incident. On April 1, 2013, the Claimant underwent a random toxicological test in accordance with company policy and applicable federal requirements. The specimen was analyzed by LabCorp and resulted in a positive for marijuana (THC). In accordance with Claimant’s Collective Bargaining Agreement (“CBA”), since this was his first positive test result within the last five (5) years, he was eligible and accepted to participate in the Rule G bypass. On April 21, 2013, Claimant signed a Rule G Bypass/EAP contract (Exhibit C, Carrier D5) in which he agreed:

*“(a) The hearing on CSX Rule G/CSX Drug/Alcohol Use Policy charge will be held in abeyance:
(b) I will continue to remain out of service until the appropriate supervisor approves my return to service,
(c) I will be carried on the Carrier’s records as being off due to “disability.”*

(d) Any reported non-compliance with my after-care plan within five (5) years of my return to service will result in a hearing on the Rule G/CSX Drug/Alcohol use Policy charge."

As part of the agreement, the Claimant was subject to five years of follow-up testing. On February 18, 2015, the Claimant participated in a follow-up toxicological test which resulted a second positive screening for marijuana (THC).

As a result of the above, Claimant was instructed to attend an investigation by letter dated March 5, 2015, in regards to the February 18, 2015, positive follow-up test. In addition to the current incident, since this is the second confirmed positive toxicological test within five (5) years, the original Rule G charges in connection with the April 15, 2013, offense were also reinstated and investigated. After two postponements, the hearing took place on June 25, 2015. Following the hearing, the Carrier determined that the Claimant had violated CSXT Operating Rules 106 (G); CSX Drug/Alcohol Use Policy; CSX Safeway – General Safety Rule – GS-2 Substance Abuse; FMCSA 382.213 Sub-Part B and FRA regulations (49 CFR Part 219.102). As a result, the Claimant was dismissed effective July 15, 2015.

After exhausting the on-property appeal process, the Organization appeals that decision to this Board.

POSITION OF THE ORGANIZATION:

The Organization contends that the Carrier failed to comply with Rule 25 of the CBA. They say that the fact that there were 2 hearing officers present during the investigation deprived the Claimant of a fair and impartial hearing. They also objected to the entry into evidence of the April 21, 2013 By-pass Agreement. They also objected to the medical officer who was called to give evidence and wanted the supervisor of the whole program to testify instead.

They say that the Carrier failed to meet its burden of proof and that the discipline assessed was excessive.

POSITION OF THE CARRIER:

The Carrier says that the Notice of Investigation was sufficient. With respect to the 2 hearing officers, as they explained at the hearing, one was there for training purposes.

They point to the admissions of the Claimant about smoking marijuana the second time and state that dismissal is the appropriate discipline for this 2nd infraction.

RESULT:

With respect to the Notice of Investigation, this Board finds that it was sufficient. The Claimant was given enough information to know the case to be met. That is all that is required in such cases, absent a specific CBA provision to the contrary. The parties did not point the Board to any such CBA provision. The Board also accepts the evidence that the 2nd Hearing Officer was present for training purposes. That is fine. Finally, after a full review of the evidence, the Board finds no merit to the remaining procedural objections. Thus, this Board dismisses the preliminary procedural objections raised by the Organization.

Turning to the merits of the case, the Board finds that there is sufficient evidence for the Carrier to have met its burden of proof, based on the admissions of the Claimant.

The Board finds no reason to interfere with the quantum of discipline assessed in these circumstances.

AWARD:

The claim is denied.



Roger K. MacDougall
Chair and Neutral Member

Dated: 2/17/2017

At: Chicago, IL