

PUBLIC LAW BOARD NO. 7599

AWARD NO. 104
CASE NO. 104

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference

vs.

Grand Trunk Western Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim is denied.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed upon Mr. M. Kijac by letter dated May 13, 2019 in connection with the allegation of that he tested positive for controlled substances on a Reasonable Suspicion Test collected on January 30, 2019 was capricious, excessive, harsh, unwarranted and in violation of the Agreement (Carrier's File GTW-BMWE-2019-00015 GTW).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Kijac's personal record shall be cleared of the charges and he shall be provided the remedy prescribed in Rule 25 of the Agreement. Additionally, the Claimant shall be compensated for all lost time and have all rights and benefits restored.”

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was removed from service on January 30, 2019 pending the results of a reasonable suspicion test for drugs or alcohol following an accident in one of Carrier's fleet vehicles. His sample tested positive for amphetamine and methamphetamine. Although claimant denied being impaired by the drugs, he admits they were in his system in violation of Rule G and Carrier's SAFE policy. He disputed the behavior observations made by two Carrier officials that led them to impose the reasonable suspicion test requirement.

Following investigation, claimant was dismissed in accordance with Carrier's discipline policy that became effective in October of 2017. Per the policy, failure of a drug test constituted a Level 4 infraction, which is the most serious under the Carrier's policy.

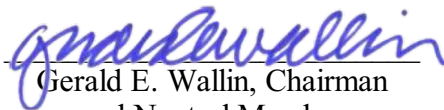
At the time of the incident and test, claimant had nearly 29 years of service with the Carrier. His work record also contained 15 and 30-day record suspensions for two previous Level 2 offenses. Level 2 offenses are considered to be serious.

Although the record contains several procedural objections made by the claimant's Organization representative, they lack merit because they either do not have the requisite Agreement support, relevance, or the support of long-standing award precedent.

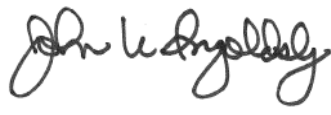
Given the state of the record before us, we find the Carrier's disciplinary decision is supported by substantial evidence. Accordingly, the claim must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


John Schlismann,
Organization Member


John Ingoldsby,
Carrier Member

July 9, 2021
Date: _____