

PUBLIC LAW BOARD NO. 6384

AWARD NO. 13
NMB CASE NO. 13
UNION CASE NO. 11965
COMPANY CASE NO. 15(01-0089)

PARTIES TO THE DISPUTE:

CSX TRANSPORTATION, INC.
[former Seaboard Coast Line
Railroad]

- and -

BROTHERHOOD OF RAILROAD SIGNALMEN

STATEMENT OF CLAIM:

"Claim on behalf of J.N. Childers (237328) to be immediately reinstated to service with all rights returned and that he be paid for all time lost since the day of his removal from service on April 3, 2001."

OPINION OF BOARD:

J.N. Childers commenced his employment with Carrier on May 31, 1998. On July 13, 1999, Carrier informed Claimant as follows:

"Reference the notice of investigation dated July 7, 1999, directing you to attend a formal investigation to be held on Tuesday, July 13 to develop the facts in conjunction with report received on July 2, 1999 that you provided a urine specimen adulterated with characteristics uncommon in human urine, on June 28, 1999, after you were notified of the requirement to provide a urine sample for toxicological testing, and charge of possible violation of CSX Transportation Operating Rule 501, paragraph 4, that portion reading 'insubordination'.

This letter confirms your request to accept responsibility for the aforementioned incident and your desire to waive your contractual rights to a formal investigation. In consideration of your acceptance of responsibility and in consideration of your cooperative attitude in this matter, it is the Carrier's decision to extend leniency in this case. You are hereby

assessed with nine months suspension. Your nine months suspension began on July 2, 1999 and will end on April 2, 2000. In addition to your suspension, you will be required to contact a CSXT Employee Assistance Counselor, and follow their direction for resolution of any identified problems. Once released by the EAP Counselor and CSXT Medical Department to return to work, you will be required to be certified in CSXT Safety and Operating rules prior to returning to normal service.

This type of behavior will not be tolerated at CSXT, nor under current Federal regulations. This discipline is considering the severity of your actions. Any re-occurrence of this type of conduct will result in immediate termination of employment with CSXT. Because you are a Train Control Employee you will be subject to future random urine tests. Your signature in the space provided below will acknowledge your understanding and agreement to these conditions.

On July 14, 1999, Claimant signed the Notice.

Thereafter, on March 15, 2001, Claimant was selected and underwent short notice testing, the results of which tested positive for cannabinoids. By letter dated March 22, 2001, Claimant was charged with violating Rule G, Safety Rule 21 and FRA regulation CFR 219.102, and directed to attend an April 21, 2001 investigation regarding same. In May 8, 2001 correspondence, Carrier informed Mr. Childers that he had been found guilty as charged and was dismissed from service.

The Organization protested the discipline maintaining that Claimant was entitled to a Rule G By-pass pursuant to Agreement S-187-86. Specifically, the Organization noted that the July 13, 1999 Waiver denoted that Claimant was charged with "insubordination", and was not charged with violation of Rule G. Therefore, Claimant is now entitled to the provisions provided

for in the Rule G By-pass Agreement, according to the Organization.

In its denial of the claim, Carrier maintained that:

"The Organization asserts Claimant should be afforded an opportunity for a Rule G By-Pass agreement because he had 'never been formally charged with a violation of Rule G until March 22, 2001.' Such argument is disingenuous because Claimant has already been afforded all of the benefits of that agreement in 1999 and he failed to successfully complete the recovery program."

Regarding the merits of the dispute, Carrier argued that the record evidence established Claimant's illegal drug use, and it is not obligated to afford Claimant a third opportunity.

At the outset, the Organization asserts that Claimant should be given "another chance" because he was first charged with "insubordination" rather than a Rule G violation. However, we do not concur..

There is no dispute that Claimant was charged with insubordination when he "provided a urine specimen for toxicological testing adulterated with characteristics uncommon in human urine" on June 28, 1999. However, it is also not disputed that Claimant, in lieu of taking the disciplinary route, chose to enroll in Carrier's employee assistance program. As part of that program, Claimant signed an agreement which stated that:

"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/Safety Rule 21 charge.

Clearly, Claimant failed to adhere to the agreement which he

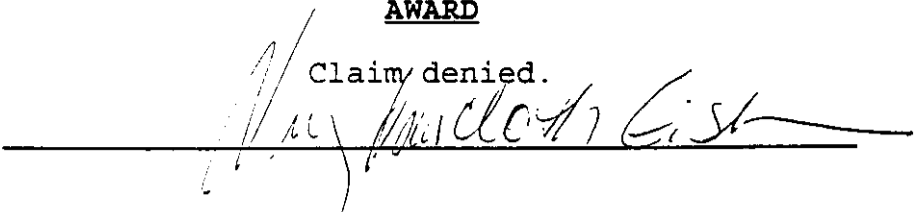
voluntarily signed, and now seeks immunity for his actions.

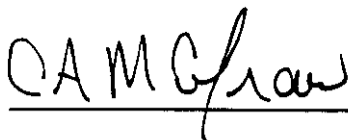
In circumstances such as these, Carrier's right to assess discipline, including the ultimate penalty of dismissal, has been recognized in all tribunals who adjudicate disputes under the Railway Labor Act.

Premised upon careful review of this record, we find that the Claimant was properly charged, afforded a fair and impartial investigation, and the discipline assessed in this matter was reasonable in the circumstances.

AWARD

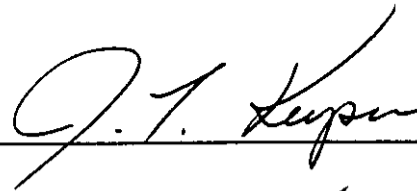
Claim denied.


Nancy Faircloth Eischen, Chair



Union Member

Dated: March 14, 2003



Company Member

Dated: 3/14/03