

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CANADIAN NATIONAL RAILROAD**

Case No. 2

STATEMENT OF CLAIM:

Appeal of the dismissal of Claimant T. Wardas for allegedly testing positive for the presence of prohibited substances while on duty on September 30, 2005.

FINDINGS:

By letter dated October 17, 2005, the Claimant was directed to attend a formal investigation and hearing "for the purpose of ascertaining the facts and determining your responsibility, if any, for allegedly possessing prohibited substances in your bodily fluids while on duty on September 30, 2005." After a postponement, the investigation was conducted on November 11, 2005, and the Claimant did not appear for the investigation. By letter dated November 29, 2005, the Claimant was notified that as a result of the investigation, he had been found guilty of violating the terms of his May 4, 2002, Leniency Reinstatement Agreement, as well as Carrier's General Rule G and the Carrier's Substance and Alcohol Free Environment (SAFE) Policy. This letter further informed the Claimant that he was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge the Claimant. The Carrier denied the claim.

The Carrier initially contends that the Claimant was discharged when he tested positive for prohibited substances in violation of Carrier rules, policies, and instructions,

as well as the terms and conditions of the Claimant's Leniency Reinstatement and EAP agreements. The Carrier maintains that when the Claimant tested positive and failed to fully comply with those terms and conditions, he voluntarily activated the self-executing provisions of those agreements, resulting in his automatic discharge. The Carrier insists that it was the Claimant's own actions and/or inactions that resulted in his discharge for clear violation of Carrier rules and the waiver/EAP agreements.

Addressing the Organization's assertion that the Claimant was not properly notified of the investigation, the Carrier asserts that the notice was delivered. Moreover, the Carrier emphasizes that the Organization representative at the hearing agreed to proceed in the Claimant's absence.

The Carrier ultimately contends that instant claim should be denied in its entirety.

The Organization initially contends that the Claimant was not properly notified of the investigation, so he was not present for the hearing. The Organization maintains that the Carrier failed to provide the Claimant with a fair and impartial hearing.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant failed to

live up to the requirements of the Rule G waiver that he had executed in May of 2002. In that waiver, the Claimant had agreed to submit to random testing. He was tested on September 30, 2005, and came up positive for alcohol and cocaine.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

This is the Claimant's second Rule G violation. The Claimant entered into a self-executing agreement in which he agreed that if he came up positive again, he would be terminated. This Board cannot find that the Carrier's action in terminating the Claimant was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER

DATED: 6-26-06



CARRIER MEMBER

DATED: 6/26/06