

BEFORE PUBLIC LAW BOARD NO. 7007

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
MASSACHUSETTS BAY COMMUTER RAILROAD**

Case No. 7

STATEMENT OF CLAIM:

- (a) Carrier's dismissal of Claimant Robert Rodrigues was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Schedule Agreement.
- (b) Claimant Rodrigues shall be reinstated to his position with the Company with his seniority unimpaired and be compensated for all lost wages and benefits which would accrue to him as provided for in the Schedule Agreement and his record cleared of the charge.

FINDINGS:

On December 20, 2007, the Claimant was removed from service following a random breathalyzer test in which the Claimant tested positive for the presence of alcohol. By letter dated December 27, 2007, the Claimant was directed to appear at a formal investigation on charges that the Claimant allegedly had been impaired by alcohol while at work on Carrier property, in violation of the terms of Rule G Waiver Agreement that he entered into in April 2007, and in violation of the Carrier's Drug and Alcohol Policy and Code of Conduct. After a postponement, the investigation was conducted on January 24, 2008. By letter dated February 1, 2008, the Claimant was notified that as a result of the investigation, he had been found guilty as charged, and he was being dismissed from the Carrier's service in all capacities. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge him. The

Carrier denied the claim.

The Carrier initially contends that its decision to dismiss the Claimant was in keeping with the tenets of the Rule G Waiver. The Carrier asserts that this decision was not arbitrary, capricious, or excessive. The Carrier maintains that the findings developed as a result of the fair and impartial investigation in this matter fully support its decision to discharge the Claimant.

The Carrier argues that in the event the Board has pause over the discipline, the Claimant is not entitled to back pay.

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

The Organization initially contends that the record developed on the property does not support the harsh penalty of discharge in this case. The Organization maintains that on this record, the Claimant should not have been dismissed.

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 evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating the Rule G Waiver that he signed on April 11, 2007. The Claimant agreed to sign the Rule G Waiver because he had tested positive for drugs in connection with a random drug test on March 26, 2007. The rules provide that he has a one-time

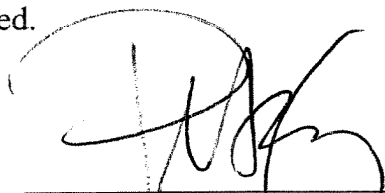
opportunity to enter into a Rule G Waiver. The Claimant executed that Rule G Waiver Agreement on April 11, 2007, and he agreed to seek assistance from a counselor, as well as to successfully complete a treatment plan. Most importantly, for this case, the Claimant agreed to the following language:

4. I further understand that if I test positive in any future drug/alcohol test, including tests taken as part of any physical examination, I will be dismissed from all MBCR service.

The record reveals that the Claimant tested positive for alcohol by a breathalyzer on December 20, 2007. That positive test was a clear violation of the Rule G Agreement that the Claimant had signed only eight months before. Given that clear violation of the Rule G agreement, this Board cannot find that the Carrier reacted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

AWARD:

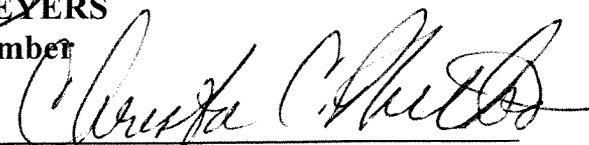
The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER



CARRIER MEMBER

DATED: 2/5/09

DATED: February 5, 2009