

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
SOO LINE RAILROAD COMPANY

Case No. 35

**STATEMENT OF CLAIM:**

Appeal of Claimant Larry Andresen's termination from the Carrier's service.

**FINDINGS:**

On March 6, 1996, the Carrier notified Claimant Larry Andresen that a formal investigation was being scheduled to determine the Claimant's responsibility, if any, in connection with allegedly providing a positive urine sample in a random drug test conducted on February 27, 1996, which had the effect of violating a Rule G bypass which he signed in April of 1994. Following the investigation, the Carrier found the Claimant guilty of violating Carrier policy and the terms and conditions of the Rule G bypass. Subsequently, the Claimant was terminated effective April 11, 1996.

The parties being unable to resolve the issues, this matter comes 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 Carrier's drug and alcohol policy when he tested positive for cocaine metabolites in his system on March 1, 1996.

The record reveals that the Claimant previously tested positive for cocaine

metabolites and THC (marijuana) metabolites on May 5, 1994. He was allowed to enter the Carrier's EAP program in an effort to cure himself of any addiction or abuse problems from which he was suffering. He passed through that program and returned to work for the Carrier. As a part of that program, he was subject to random testing.

In March of 1996, the Claimant was tested again and he showed a positive result for drugs in his system. Although the Claimant takes the position that he was returned to service too early and that he did not receive sufficient follow-up treatment from the EAP and counseling services, this Board believes that the Claimant bears some responsibility for his own behavior. It is not the Carrier's fault that the Claimant returned to cocaine use after he completed the program which the Carrier allowed him to enter two years prior to the final incident.

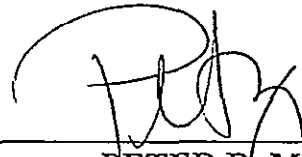
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

In this case, the Claimant was already given his second chance to reform his behavior. The Carrier's rules strictly prohibit employees being on the premises with drugs or alcohol in their system. This Claimant was given a second chance and he failed to remain drug-free. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment after this second

occurrence. Therefore, the claim will be denied.

**AWARD:**

Claim denied.



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PETER R. MEYERS  
Neutral Member

Dated: May 15, 1996