

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

Case No. 37

STATEMENT OF CLAIM:

Appeal of Claimant Keith R. Driver's termination from the Carrier's service.

FINDINGS:

On June 12, 1996, the Carrier notified Claimant Keith Driver 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 June 3, 1996, which had the effect of violating a Rule G bypass which he signed in January of 1995, and allegedly failing to protect his assignment on June 4, 5, 6, 7, 10, 11 and 12, 1996, and absenting himself from duty without proper authority. Following the investigation, the Carrier found the Claimant guilty of violating Carrier policy and the terms and conditions of the Rule G bypass and failing to protect his assignment on June 4, 5, 6, 7, 10, 11, and 12, 1996 and being absent without proper authority.. Subsequently, the Claimant was terminated effective July 23, 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 failed to live up to the terms and conditions of his Rule G bypass that he agreed to in 1995. Also, there is sufficient evidence that the Claimant failed to protect his assignment on seven separate dates in June 1996.

The record reveals that in January of 1995 the Claimant tested positive for cocaine in his system. At that time, the Claimant was allowed to go into a treatment program and remain an employee of the Carrier. However, he was required to accept the terms of a Rule G bypass agreement in which he agreed to be subject to unannounced follow-up tests. The record reveals that on June 3, 1996, the Claimant was given one of those follow-up tests and he once again tested positive for 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 action to have been unreasonable, arbitrary, or capricious.

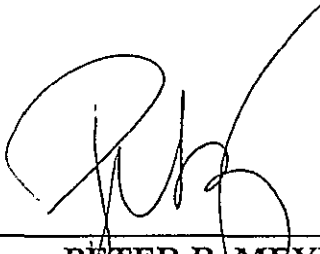
This Board has held on numerous occasions in the past that a Carrier need not put up with employees who cannot remain drug and alcohol free. In this case, the Claimant was given a second chance to remain an employee of the Carrier and, at that time, he agreed to keep himself free of drugs and alcohol. The Claimant was obviously unable to live up to the terms of that agreement, and, by testing positive for the second time, he subjected himself to discharge. This Board cannot find that the Carrier acted

unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment.

Therefore, the claim must be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member

Dated: September 20, 1996