

**BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040**  
**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**  
**and**  
**SOO LINE RAILROAD COMPANY**  
**(CMSP&P)**

Case No. 40

**STATEMENT OF CLAIM:**

Appeal of Claimant Thomas Kubera's termination  
from the Carrier's service.

**FINDINGS:**

On October 16, 1996, the Claimant received notice from the Carrier instructing him to appear for a formal investigation into the charges of a Rule G violation. Claimant had tested positive for ethyl alcohol during a random drug screen which he had previously agreed to in his Rule G bypass agreement that he signed in June of 1995 after he tested positive for marijuana. After the hearing, it was determined that the Claimant was guilty as charged and on November 5, 1996, the Claimant notified the Claimant that he was being terminated from its service.

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 testing positive for having ethyl alcohol in his blood while at work on October 7, 1996. The record reveals that the Claimant had previously tested positive for having

marijuana in his system in June of 1995. At that earlier time, the Claimant signed a Rule G bypass agreement in which he agreed to be tested on a random basis and he acknowledged that any future positive findings could lead to his dismissal. The Carrier determined to dismiss him after this second positive test which was also in violation of the Rule G bypass agreement.

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 several occasions in the past that the Carrier need not put up with employees who cannot come to work without alcohol or drugs in their system. This Board recognizes that the Claimant has been an employee of the Carrier for a long period of time. However, the Claimant simply could not live up to the terms of his Rule G bypass and keep himself clean of improper substances. Consequently, I must find that the Carrier had every right to terminate the Claimant's employment after the second positive test. Therefore, the claim will be denied.

**AWARD**

Claim denied.



PETER R. MEYERS, Neutral Member

Dated: December 19, 1996