

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

Case No. 43

STATEMENT OF CLAIM:

Appeal of Claimant Paul L. Pearson's dismissal from the
Carrier's service.

FINDINGS:

On December 19, 1996, the Claimant received notice from the Carrier instructing him to appear for a formal investigation into the charges that the Claimant allegedly refused to submit to a drug screen on December 18, 1996, which was a follow up test after he tested positive on April 11, 1995, and that he allegedly failed to protect his assignment on December 18 and 19, 1996, by being absent without proper authority. After the hearing, it was determined that the Claimant was guilty as charged and on January 20, 1997, the Carrier notified the Claimant that he was being dismissed from the Carrier's 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 to support the finding that the Claimant was guilty of refusing to submit to a random drug screen on December 18, 1996, and then failing to protect his assignment on December 18 and 19, 1996.

The record reveals that the Claimant had previously been guilty of a Rule G violation. He was given a Rule G Waiver and was required to submit himself to random drug tests whenever requested by the Carrier. He had taken several drug tests in the past and passed them. However, on December 18, 1996, he showed up for work and was in a room when it was being discussed that he was going to have to take a drug test that day. He subsequently left the area and did not return to work that day or the next day.

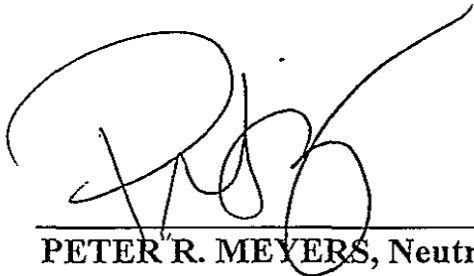
Although the Claimant disputes the fact that he was aware that he was supposed to take a drug test that day, and he states that he really wasn't there to work on December 18, 1996, but only to retrieve some personal items, the record just does not support his claims. The Claimant was in the room when the Supervisor directly stated to another person in front of the Claimant that he was going to be bringing the Claimant down for a drug and alcohol test that day. The Claimant, who admitted that he had been at a party recently, apparently was afraid that he was going to test positive and merely "took a powder". The Claimant did not appear for the drug test as was required. Moreover, he did not protect his assignment that day or the next day. There is an insufficient basis in the record to support the Claimant's contention that he was not scheduled to work that day and he only came for some personal reasons, not at all relating to his working on the premises that day.

Once this Board has determined that the Claimant is guilty of a Rule G violation in violation of his Rule G Waiver conditions, there is very little else that has to be decided in

this case. All we have to determine is whether or not the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated him after this second Rule G violation. Given the fact that the Claimant had previously tested positive and was given a second chance by the Carrier, this Board cannot find that the Claimant was entitled to another chance. He was required to remain drug and alcohol-free and to submit himself to tests when requested. He did not live up to the conditions of the Rule G Waiver. Therefore, his claim must be denied.

AWARD

Claim denied.



PETER R. MEYERS, Neutral Member

Dated: February 17, 1997