

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

Case No. 45

STATEMENT OF CLAIM:

Appeal of Claimant Carlos Tapia's dismissal.

FINDINGS:

The Claimant, Carlos Tapia was employed by the Carrier as a laborer.

On December 27, 1996, the Claimant received notice from the Carrier instructing him to appear for a formal investigation into the charges that the Claimant allegedly had tested positive on December 26, 1996, in violation of the Rule G bypass agreement which he signed in June of 1996. On January 24, 1997, the Carrier notified the Claimant that he had been found guilty of all charges and, as a result, was being terminated effective immediately.

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 was sufficient evidence in the record to support the finding that the Claimant was guilty of a second Rule G violation while he was subject to the terms and conditions of a Rule G bypass. Consequently, there was a sufficient basis to support his discharge.

The record reveals that in June of 1996, the Claimant returned from furlough and

was given a drug screen. The drug screen showed that the Claimant was positive for marijuana. The Claimant was allowed to exercise his rights under the Rule G bypass and agreed that he would remain drug free. He also agreed to submit to unannounced follow-up drug tests for a period of 60 months.

The record further reveals that in December of 1996, the Claimant was given one of those follow-up drug tests and he tested positive for marijuana. At the hearing, the Claimant admitted using marijuana as a result of family problems. On both occasions, the Claimant admitted that he was having severe marital problems and was smoking marijuana at home. The record reveals that the Claimant showed up for work with marijuana still in his system.

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.

The Claimant in this case voluntarily signed a Rule G bypass agreement in which he stated that he would remain drug free and would submit to random drug tests over the period of 60 months. He does not challenge that he came up positive less than six months from signing that Rule G bypass agreement. Given the seriousness of the offense here, as well as the failure of the Claimant to live up to his responsibilities under Rule G bypass agreement, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or

capriciously when it terminated his employment. Therefore, the claim will be denied.

AWARD

Claim denied.

A handwritten signature in black ink, appearing to read 'P. Meyers', is written over a horizontal line.

PETER R. MEYERS, Neutral Member

Dated: April 16, 1997