

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

Case No. 154 Award 138

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Chicago and Northwestern Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood:

1. The dismissal of D.A. Vargas for alleged violation of Rule G was without just and sufficient cause and on the basis of an unproven charge (Organization File 3KB-4399 D; Carrier File 81-88-154).

2. D.A. Vargas shall be reinstated with seniority and all other rights unimpaired, compensated for all wage loss suffered and made whole for all losses due to the Carrier's unjust dismissal.

FINDINGS:

Claimant D.A. Vargas was employed by the Carrier as a machine operator at Belvidere.

On June 22, 1988, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charge:

Your responsibility for violation of Rule G and Rule G (Addition) as contained in Part 1 of the General Regulations and Safety Rules (Revisions and Additions) effective January 1, 1985, and also known as ADM-Engineering Bulletin No. 6, Rule G for BMW employees dated November 5, 1987, while employed as a machine operator at M.P. 44 on the Belvidere Subdivision on June 14, 1988.

After one postponement, the hearing took place on July 6, 1988. On July 15, 1988, the Carrier notified the Claimant that he had been found guilty of the charge and was assessed discipline of dismissal. Thereafter, the Organization filed a claim on Claimant's behalf, challenging his dismissal.

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 Rule G on June

14, 1988.

Although the Organization contends that there was no reasonable cause for the Carrier to order the Claimant to submit to a urine test, the record reveals that the Claimant was involved in an accident between his machine and several railroad cars, and therefore the Carrier exercised its right to test all of the individuals involved.

The test results came back with the result that the Claimant had in excess of six hundred (600) nanograms of benzoylecognine, which is the major psychoactive constituent of cocaine. By the Claimant having the above chemical in his urine, the Carrier had a right to presume that he was impaired by the illegal drug while on duty. Therefore, the Claimant was in violation of Rule G.

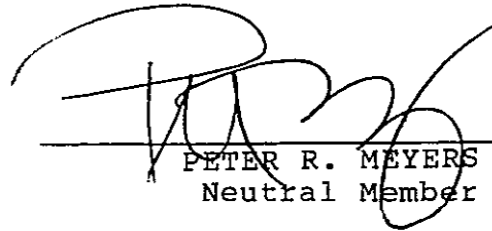
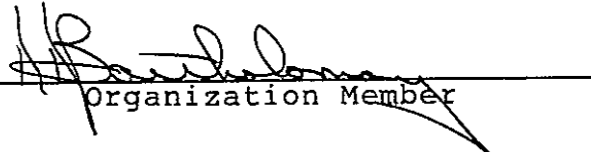
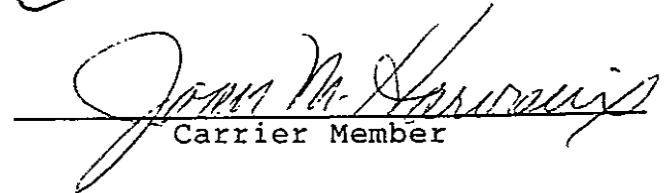
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

In the case at hand, the Claimant was terminated for his Rule G violation. This Board has held on numerous occasions that termination is a proper sanction for employees who violate Rule G. Moreover, the Carrier has, as part of its alcohol and drug policy, a provision that states that it will not consider for reinstatement an employee who has been found responsible and dismissed for a drug-related violation.

This Board has reviewed the entire record, and we cannot find any reason to second-guess the Carrier's action in this case. Therefore, the claim must be denied.

AWARD:

Claim denied.


PETER R. MEYERS
Neutral Member
Organization Member
Carrier MemberDate: 12/17/90