

Carrier's drug/alcohol policy; 2) his participation in Carrier's Employee Assistance Program (EAP); and 3) his full compliance with the EAP and all instructions issued him by its manager. The waiver provided that, "[F]ailure to abide by the instructions or program set for by the Employee Assistance Manager and/or the Medical and Environmental Department will automatically result in dismissal if such charges are proven in a separate formal investigation."

On November 8, 2004, Carrier's EAP Manager notified the Director of Medical Support Services and the Organization that Claimant had not followed through with EAP requirements and was therefore in violation of his waiver. On November 11, 2004, Carrier's Manager Medical Support Services notified Ron Jackson, General Manager, Northwest Division, that Claimant had failed to comply with instructions regarding his treatment and instructed him to initiate an investigation. The Claimant did not appear at the investigation.


The Carrier first asserts that the investigation was conducted in a fair and impartial manner. On the merits, the Carrier contends that it has met its burden of proof, as the record clearly demonstrated that Claimant failed treatment and therefore violated the terms of his waiver. It is well recognized in the industry, the Carrier notes, that such conduct is grounds for dismissal. Thus, the Carrier concludes, the claim should be denied.


The Organization asserts that the penalty of dismissal is excessive and does not take into account Claimant's 12 years of dedicated service. Therefore, the Organization request that the claim be sustained.

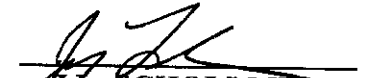
The Board has carefully reviewed the record in its entirety. First, we find that the investigation was conducted in a fair and impartial manner. On the merits, there is no question, and Claimant did not contest, that Claimant violated his waiver agreement by failing to comply with the EAP Manager's treatment instructions. Thus, Claimant failed to abide by the conditions for retention of his employment following his positive test result. The waiver specifically informed Claimant that such conduct was grounds for dismissal, and numerous arbitration awards support the Carrier's right to discharge an employee who has failed to comply with the conditions of a bypass program. Therefore, the Carrier's decision to dismiss the Claimant cannot be found arbitrary, capricious or unjust.

AWARD

Claim denied.


JACALYN J. ZIMMERMAN
Neutral Member


ROGER BOLDRA
Carrier Member


J.L. SCHOLLMAYER
Organization Member

Dated this 31ST day of March, 2009.