

The Second Division consisted of the regular members and in addition Referee Robert O. Harris when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement Mechanical Department Electrician G. M. Saunders was unjustly treated when he was dismissed from service on June 27, 1989, following formal hearing for alleged violation of Carrier Rule G, following a return to duty physical that included a drug screen test which allegedly showed positive results for marijuana.

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician G. M. Saunders to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages; including interest at the rate of ten percent (10%) per annum.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Prior to returning to service, Claimant was required, due to his off duty injury to his right leg and his automobile accident on December 12, 1988, to complete a clinical (physical) examination, which included submitting a urine sample for toxicological (drug/alcohol) testing.

Claimant was examined on March 1, 1989, and his urine sample was sent to a testing laboratory. On March 7, 1989, the laboratory informed Carrier's Medical Department that Claimant had tested positive for cannabinoids (marijuana) using the Enzyme Immuno Assay (EIA) and Gas Chromatography/Mass Spectrometry (GC/MS) testing methods. The GC/MS, which is a confirmation test calibrated to detect one metabolite at a minimum level of 10 nanograms per milliliter (NG/ML), showed that Claimant tested positive for cannabinoids (marijuana) at 200 NG/ML.

At the Hearing on his alleged Rule G violation, Claimant was asked to explain his positive testing for marijuana. Claimant responded:

"Only thing that I could even say about it is I do have two roommates I live with that do smoke it. I myself have not. I try not to be around it. I have my children with me there. I try not to be around it but sometimes you just, you walk into it, whatever, I guess."

Carrier advised that in order for Claimant to be considered for reinstatement, he must enroll in and successfully complete Carrier's Rehabilitation Program, and successfully pass a Carrier-directed physical examination. No attempt apparently has been made by Claimant to enroll in Carrier's Rehabilitation Program.


The role of this Board in its appellate function in discipline cases is in part, to determine if the Carrier has met the test of substantial evidence. Claimant has not shown any basis for overturning the findings of the Carrier after the Hearing except for his denial of having smoked marijuana. The Carrier chose not to believe that denial in the face of a laboratory test to the contrary. Accordingly, Claimant has failed to meet his burden of proof to show that the decision of the Carrier was not supported by substantial evidence.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1992.