

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The dismissal of Machine Operator D. W. Hicks for alleged '... use of Marijuana (Cannabis) as shown in urinalysis taken at Caroline Clinic ... on March 10, 1989....' was without just and sufficient cause, arbitrary and on the basis of unproven charges (System File MW-89-43/480-77-A SPE).

(2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be reinstated with seniority, vacation and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

As a result of being involved in an on duty accident with his machine, the Claimant consented to a drug screen test. He also requested the testing of a blood sample. The drug screen showed positive results for marijuana which prompted a notice of Investigation for alleged violation of Rule G which precludes use of controlled dangerous substances. The Investigation was recessed to permit the Carrier to obtain the results of the blood test, which also tested positive.

At the Investigation, the Claimant neither admitted nor denied use of marijuana, but he has questioned the "chain of custody" of the urine sample to this Board.

The Organization has presented to us an extensive and well documented argument concerning this very important aspect of proof in a drug use case. However, we must be controlled by the record before us as developed at the hearing and on the property.

The Claimant testified that he had lost sight of the urine sample at the time the specimen was taken, and since accidents can occur, he questions that the sample tested may have been of someone else. But, he also admitted that he did not question the validity of the urine to be tested on the day in question, he had no basis to believe it was an invalid sample, and he just wanted to go home.

On March 10, 1989, the Claimant signed a form below the Certification that "...the urine accompanying this form is my own. Further, I state that the sample was properly labeled and sealed in my presence prior to forwarding for laboratory analysis."

Without minimizing the need for appropriate showing of chain of custody in given cases, the record before us indicates that the Claimant's defense in this case must fail.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.