

The Third Division consisted of the regular members and in addition Referee Stanley E. Kravit when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen of the Southern Pacific Transportation Company (Western Lines):

Claim on behalf of R. C. Gollen for reinstatement to service with all lost compensation and benefits restored beginning December 12, 1986, and continuing until this dispute is resolved, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 59 and 72, when it failed to find Claimant guilty as accused." Carrier file SIG-A-87-G.

FINDINGS:

The Third 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.

Claimant was a Signal Maintainer Foreman with 19 years of total service when he was involved in an accident on December 12, 1986, while driving a Carrier truck. Claimant was hit head-on in his own lane. He testified at the investigation that he was not at fault and that the police report and statements from witnesses supported this conclusion. The Carrier's Superintendent, the official most knowledgeable about the details, confirmed in his testimony that the Claimant was not at fault.

The accident occurred at 3:00 P.M. and was reported by the Claimant to the Superintendent at 3:45 P.M. At that time the Superintendent advised the Claimant that he would have to take a urine drug screen test. In a subsequent call, he told Claimant that a refusal would result in his being removed from service. Claimant did refuse and was immediately removed from service pending investigation.

On January 15, 1987, Claimant was discharged for insubordination for his refusal to submit to a drug screening test. While the Claimant's physical condition at the time of the accident may have dictated his initial refusal,

his continued refusal to be tested was made with full knowledge of the Rule involved and the possible consequences if he persisted. At the hearing Claimant testified that his refusal was based on his belief that there was no reasonable cause for the Carrier's order.

The Rule under which Claimant was discharged states:

"CONDUCT: Employees must not be:

(3) Insubordinate:

Any act of... willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal...

Indifference to duty or to the performance of duty, will not be condoned."

The issue is whether Claimant is properly subject to discharge as a consequence of failing to comply with a direct order to provide a urine sample for drug testing.

One of the oldest and most widely accepted principles of labor relations is that an employee must generally accept an order of management and, if he disagrees with it, rely upon the grievance procedure rather than self-help. If one employee can refuse to obey reasonable orders within the scope of his duties, without the sanction of discharge, all may do so. The result would be chronic inefficiency and even chaos.

This potentially severe impact upon the responsibility of management to direct the work force and maintain efficient operations is the rationale for the strong admonition to "work now and grieve later." A willful refusal to obey a direction of a supervisor, when the order is within the scope of the employee's duties or is otherwise a reasonable directive from management, is a material breach of the duty owed to the Carrier and is grounds for dismissal.

This principle is one of the components of just cause. The Carrier retains the right to discharge, but only for the purpose of maintaining operational efficiency, which includes safe operation and a proper concern for a drug-free work place and work force. Just cause requires a reasonable relationship between the Rule which is cited as grounds for discharge and a legitimate objective of the Carrier.

In the present case the Carrier has the burden of showing that it is reasonable to infer that every traffic accident potentially involves drug use or the influence of drugs, regardless of the circumstances. If there is reasonable or probable cause to so infer, then a blanket order to provide a urine sample in every accident situation is reasonably related to the Carrier's need to operate safely and efficiently.

The nature of Claimant's accident was such that there is no reasonable basis to believe that he was in any way at fault or for the remotest suspicion that he was not drug-free. Under the circumstances, requiring a urine test was equivalent to random testing and is therefore objectionable under the concept of just cause. The Carrier cannot be relieved of its burden to establish just cause simply because a traffic accident has occurred. The Carrier's ability to operate is in no way impaired by its inability to obtain a urine sample from an employee whose conduct has given no cause to believe he is in any way responsible for an accident or under the influence of drugs.

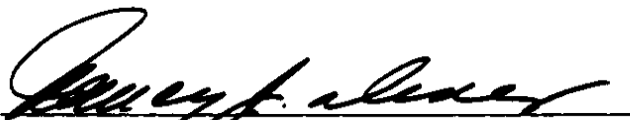
Inasmuch as there was no probable cause to justify testing the Claimant, the Claimant cannot be found guilty of insubordination in refusing to take the test. Claimant shall be reinstated with seniority unimpaired and compensated for actual wage loss in accordance with the Agreement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1989.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 27802

DOCKET NO. SG-28281

NAME OF ORGANIZATION: Brotherhood of Railroad Signalmen

NAME OF CARRIER: Southern Pacific Transportation Company
(Western Lines)

The Findings in Third Division Award 27802 concluded:

"Claimant shall be reinstated with seniority unimpaired and compensated for actual wage loss in accordance with the Agreement."

The Organization requests an Interpretation of the Award contending Claimant is entitled to reimbursement for overtime, at the overtime rate, for such overtime as he would have worked if he had not been discharged.

The Carrier contends that the Award is clear and unambiguous and there is no need for interpretation or clarification.

The Statement of Claim before the Board was for "reinstatement to service with all lost compensation and benefits restored,..." The Findings of the Award sustained the Claim and its direction of reinstatement "in accordance with the Agreement" is unambiguous. It means that the inclusion or exclusion of reimbursement for overtime must be determined in accordance with a specific Agreement provision, or, in the absence of a specific provision, in accordance with the past practice of the parties in similar circumstances.

Clearly, the parties must examine both their Agreement and past practice. There is an analogy here to Article X of the National Agreement of November 16, 1971, which provides for offsetting loss of earnings and refers to existing rules or practices with regard thereto. The parties are instructed to examine similar language or practice with regard to the precise issue here.

If such investigation does not reveal a governing principle, either party may then return to the Board for an Interpretation of what would then be an ambiguity in the Award.

Referee Stanley E. Kravit, who sat with the Division as a neutral member when Award 27802 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 29th day of August 1991.