

AUG 16 1989

PUBLIC LAW BOARD NO. 1582

PARTIES) THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. Claimant Melton dismissed from service effective January 5, 1989 for his failure to comply with instructions contained in Dr. Khuri's letters dated August 4 and October 18, 1988, and his failure to satisfactorily pass the required medical examination.
2. Claim for reinstatement of Claimant Melton with seniority, vacation, all rights unimpaired and with pay for all wages lost as a result of the discipline being extreme, unwarranted, unjustified and unsupported by any of Carrier's rules.

FINDINGS: This Public Law Board No. 1582 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was dismissed from the service of the Carrier effective January 5, 1989 for his failure to comply with instructions contained in Dr. Khuri's letters dated August 4 and October 18, 1988 and his failure to satisfactorily pass the required medical examination.

The Union contends that the discipline issued was unwarranted and unjustified and is not supported by Carrier rules. The Union further contends that if the charges were supported, the discipline issued is excessive in proportion to the charges.

The evidence of record establishes that the claimant took a physical re-examination which included a drug screen urinalysis on July 16, 1987. The laboratory report on the claimant's alcohol/drug screen tested positive for marijuana.

By letter dated August 4, 1988 Dr. Khuri sent a certified letter, return receipt requested, to the claimant advising him of the test results. The claimant was further advised that he was being medically disqualified and placed on a medical leave of absence.

The claimant was instructed that he must provide a negative urine sample within ninety days of the date he received Dr. Khuri's letter. The claimant was instructed that when he was ready to be tested, he was to take the letter and the enclosed requisition form to Dr. Ronald Matsusaki's office to provide the negative urine specimen.

The claimant was also instructed to obtain an evaluation and clearance to return to work from Bruce Rehberg, the Santa Fe Assistance Counselor in Fort Worth. The claimant was further advised that his failure to follow the referred-to instructions within ninety days would result in disciplinary action.

The evidence establishes that the claimant signed for the letter on August 8, 1988. The evidence further establishes that Dr. Khuri again sent another certified letter dated October 18, 1988 to the claimant reminding him of the deadline of November 6, 1988 for providing a clear urine specimen and the consequences for his failure to do so. The claimant signed for that letter on October 21, 1988.

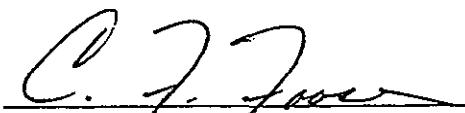
The evidence establishes that the claimant never complied with Dr. Khuri's instructions to provide a negative urine specimen. The claimant admitted he did not do so. There are numerous awards which have ruled on this subject matter. The Board finds there is no justification to set the discipline aside.

AWARD: Claim denied.


Preston J. Moore

Preston J. Moore, Chairman

Dated at Chicago, Illinois
August 22, 1989


C. J. Jones

Union Member


L. J. Pope

Carrier Member