

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Illinois Division Welder T. E. Brent from service was unjust.
2. That the Carrier now reinstate Claimant Brent with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 10:00 a.m. July 13, 1989 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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 notified to attend an investigation in Chicago, Illinois on July 11, 1989. The investigation was postponed and held on July 13, 1989.

The claimant was charged to determine his responsibility, if any, in connection with possible violation of Rules B, C, 1000, 1020, and 1026 of Safety and General Rules for all Employees, Form 2629 Standard, 1988, concerning his alleged failure to comply with the written instructions from System Medical Director dated March 15, 1989.

Pursuant to the investigation the claimant was removed from service for failure to comply with written instructions from the System Medical Director dated March 15, 1989.

The testimony herein establishes that the claimant was placed on a leave of absence on March 15, 1989. The Medical Director wrote the claimant a letter on that date advising him that his periodic urine screen conducted as part of his physical examination was positive for the illegal drug marijuana, and that he was medically disqualified from service.

This letter further stated that on August 15, 1988 the claimant had provided a drug free urine specimen and was returned to service when the results were received in the Medical Director's office.

The evidence establishes that on March 6, 1989 another drug sample tested positive for the illegal drug cocaine, and the claimant was again medically disqualified from service and was instructed within 90 days of receipt of the letter to accomplish both of the following.

1. Provide a supervised urine specimen free of all illegal drugs to Dr. Samuel Kline.
2. Obtain an evaluation and clearance to return to work from Mr. Terry Cordray, the Santa Fe Employee Assistance Counselor in his area.

This letter further stated: "Failure to follow these instructions and accomplish both requirements within 90 days of receipt of this letter will result in my informing the General and Division Managers about the result of your test. You then may be subject to discipline."

The evidence indicates that the receipt for the letter was signed for by Mattis Gray on March 16, 1989. Thereafter, by letter dated May 22, 1989 the claimant was notified that his most recent repeat urine drug screen showed no evidence of drugs but was advised he would not be allowed to return to service until he had contacted Terry Cordray, the Santa Fe Employee Assistant Counselor in his area for an evaluation and clearance.

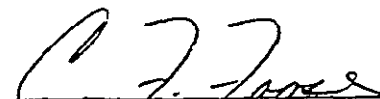
This letter further stated the claimant must contact Mr. Cordray by June 14, 1989. Again the claimant was warned that failure to comply with those instructions could result in discipline. The claimant was also advised if he had any questions to call Dr. Khuri, Medical Director.

The claimant did not appear during the investigation. Under the circumstances herein there is no justification to set the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman

*Dated at Chicago, Illinois
September 12, 1989*


Union Member


Carrier Member