

PUBLIC LAW BOARD NO. 2439

Award No. 155  
Case No. 155

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
Southern Pacific Transportation Company (Western Lines)

STATEMENT  
OF CLAIM:

"That the Carrier violated the Current Agreement when it dismissed Mr. K. A. Treece from its service, said action being excessive, unduly harsh and an abuse of discretion.

"That the Carrier reinstate Mr. K. A. Treece to his former Carrier position with seniority and all other rights restored unimpaired, with pay for all loss of earnings suffered, and his record cleared of all charges."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that Claimant was involved in an automobile accident on April 8, 1987 while at work. As a result of this accident he was required to take a physical examination and in the course of that physical examination his use of marijuana was established by toxicological tests and later confirmed. He was charged with violation of Rule G on April 21, 1987 and following a formal investigation was dismissed from service. Subsequently based on an appeal made to the Superintendent, Claimant was reinstated by agreement between himself and Carrier (including acquiescence by his General Chairman) dated September 4, 1987. This reinstatement agreement on a probationary basis was subject to certain conditions. Among them it was agreed and understood that Claimant would participate in the rehabilitation program with the Employee Assistance Counselor specified by Carrier and agreed he would totally abstain from alcohol and other drugs. It was understood that for a period of at least two years he would be subject to random, unannounced alcohol and/or drug tests as part of the

understanding. It was also specified in the written agreement that any violation of the terms of this conditional reinstatement would result in his being placed in a dismissed status once again.

The record indicates further that on September 28, 1987, only a few weeks following the written conditional understanding (dated September 2, 1987) Claimant submitted to a random urinalysis, the results of which indicated the presence of methamphetamine. Based on this finding Claimant was advised that he was returned to a dismissed status by virtue of his failure to abide by the terms of his conditional reinstatement.

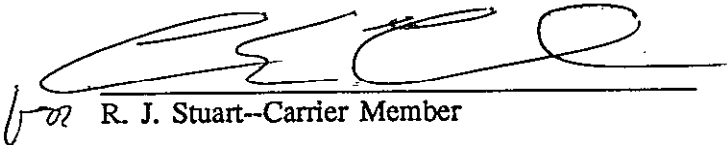
As the Board views it the facts in this matter are clear and unambiguous. Claimant, by virtue of a standard laboratory test (confirmed by different methodology) was found to have a drug, methamphetamine, in his blood stream and system. This finding was not only a violation of his conditional reinstatement but also of Rule G of Carrier, which was the cause of the initial dismissal. Since the laboratory tests are positive record, Carrier is not obligated to investigate further and the dismissal was appropriate under all the circumstances. There is no merit to the Claim in this case.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman

  
R. J. Stuart--Carrier Member  
C. F. Foose--Employe Member

San Francisco, California  
August 31, 1989