

PUBLIC LAW BOARD NO. 2439

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

STATEMENT OF CLAIM:

1. That the Carrier violated the Agreement the current Agreement, when it dismissed Northwestern Pacific Railroad B&B Carpenter, D. E. Cookman. Said action being excessive, unduly harsh, and in abuse of discretion.
2. That Carrier reinstate Claimant 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.

Claimant had been employed by Carrier in 1976. He was furloughed on March 6, 1984. In October of 1988, he was recalled and required to complete a return-to-duty physical examination. That physical examination, on October 26, 1988, included a urine specimen for toxicological testing. On November 1, 1988, the testing laboratory reported that Claimant had tested positive for marijuana. Based

on this incident, Claimant was required to be present at a formal hearing dealing with his failure to pass the toxicological test. He was charged with responsibility which could involve violation of Carrier's Rule G. Following the hearing, Claimant was notified that he was dismissed from service for violation of that rule.

Rule G was revised by Carrier on April 30, 1982, to include the following:

The illegal use, possession or sale while on or off duty of a drug, narcotic or other substance, which affects alertness, coordination, reaction, response or safety, is prohibited.

Carrier's policy with respect to drugs also includes the fact that first time offenders are afforded an opportunity to return to work by participating in the Carrier's rehabilitation program.

The record indicates that at the investigation Claimant admitted to having used marijuana some 2 months prior to taking the return-to-duty physical examination. However, he claimed that it was not his regular practice to indulge in the use of that drug. Further, Claimant indicated that he was willing to participate in a program to get himself back to work for the railroad. The record indicates that Carrier was willing to reinstate Claimant to service if he reported to the Employee Assistance Counselor and received a favorable recommendation. Subsequently, by letter dated March 9, 1990, Carrier informed the Organization that Claimant had not made contact with the Employee Assistance Counselor and approximately 2 years later he still had not made contact with the Counselor.

The Organization argues that at the time of the physical examination, when Claimant tested positive, he was not under employment, and therefore was not covered by Carrier rules. He certainly wasn't covered by Carrier rules 2 months

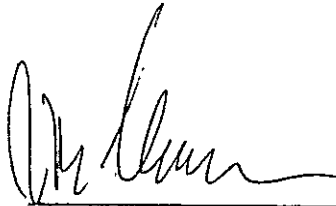

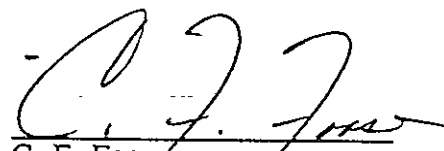
previously in August 1988, while furloughed. The Organization believes that the Claimant should not have been subject to any disciplinary action in view of the fact that he was not an employee at the time that he tested positive. The Organization argues that Claimant should have been considered medically unfit for duty and be permitted to return to duty at a time when he could provide Carrier with a drug-free urine specimen.

Carrier argues that at the time of the test the rules specified that the use of drugs, whether on or off duty, was a violation of Carrier rules. Furthermore, it is argued that he was indeed on Carrier's property and subject to its rules while taking the physical examination for returning to work.

The Board views this matter as one in which it is obvious that there was a violation of Carrier's Rule G. That rule specifies that not only must an employee be free from drugs on duty, but also off duty. More importantly at the time that the urine specimen was taken, the Claimant was on Carrier's property, being examined by Carrier's Medical Department, in a return-to-work physical. Therefore, at that time, he was clearly subject to Carrier's rules. For the reasons indicated, therefore, it is obvious that there was a violation of Rule G and under the circumstances, Carrier was correct in its conclusions. It is also noted that the Claimant failed to avail himself of an opportunity to rid himself of the drug problem, as provided for and indicated by Carrier to the Organization in the course of the handling of this dispute. For the reasons indicated, therefore, the claim must be denied.

AWARD

Claim denied.

I.M. Lieberman, Neutral-Chairman  
E. L. Joyner  
Carrier Member  
C. F. Foote  
Employee MemberSan Francisco, California  
March 30, 1993