

Public Law Board No. 2720

Case. No. 92

Parties to Dispute: International Brotherhood of Firemen and
Oilers, AFL-CIO
and
Consolidated Rail Corporation

Statement of Claim: System Docket No. CR-3892
Issue: Dismissal of B. Martin

Opinion of the Board: Claimant began his service with Carrier on October 7, 1976, as a Laborer at Carrier's Conway, Pennsylvania Engine House.

During 1987, Claimant was assigned as a Laborer at the Conway Engine House. However, due to a non-occupational disability, which is not specified in the record, Claimant did not perform any service for Carrier during the early part of 1987.

On August 25, 1987, in anticipation of his return to work, Claimant was directed to undergo Carrier's required return-to-duty, re-employment physical examination which was to be conducted by Carrier's Medical Department. As a part of said physical examination, Claimant was required to submit to a urinalysis, the purpose of which was to check for the presence of a variety of prohibited drugs in the returning employee's system.

According to the record, under Carrier's drug testing program the employee's urine sample is collected as a part of the employee's physical examination; the specimen is then sent to the Roche Biomedical Laboratories, Inc. for testing following a strict chain-of-custody procedure; the specimen is then submitted to an initial drug screen and, if a positive result is received, a more sophisticated test (gas chromatography - mass spectrometry test [GC/MS]) is used to confirm the results. Under this particular procedure which is authorized by Carrier, of the various drugs which are tested for by Roche Biomedical Laboratories, Inc., the cut-off level for cannabiniods (i.e. - marijuana) is 50 nanograms per milliliter (NG/ML).

Pursuant to Claimant's August 25, 1987 reemployment physical examination, Claimant's urine specimen was sent to the Roche Biomedical Laboratories, Inc. for testing. On September 1, 1987, Carrier's Medical Department was notified by Roche Laboratories that Claimant's urine specimen had tested positive for marijuana both on the initial screen and on the confirming test. As a result of the positive test results, Claimant was medically disqualified by Carrier for reemployment.

On September 1, 1987, Dr. G. R. Gebus, M. D., Carrier's Regional Medical Director, informed Claimant that he was disqualified from service for violating Carrier's medical policy which "... forbids the active employment of persons who are

dependent upon or use drugs which may impair sensory, mental or physical functions." In that same letter, Dr. Gebus offered Claimant the option of either ridding his "... system of Cannabinoids and other prohibited drugs and to provide a negative urine sample within 45 days ... (or) ... be subject to dismissal"; or, in the alternative, contacting Carrier's Employee Assistance Counselor for the purpose of undergoing drug abuse treatment, in which case, the time period within which he was required to provide a negative urine sample could be extended to 45 days after he completed the EAP program, or a total of 125 days from the date of the letter, whichever came first. According to the record, Claimant elected not to seek counseling; and he did, in fact, provide a negative urine sample within the required 45 days time period.

In an October 19, 1987 letter, Claimant was informed by Dr. Gebus that his urine sample had tested negative, and that, as a result, he would be qualified for return to service on October 20, 1987. In that same letter, however, Dr. Gebus further informed Claimant that he would be subject to future drug testing in order to assure compliance with Carrier's drug free policy for employees; and that any failure to comply with said policy could subject Claimant to dismissal. The significant portions of said letter are as follow:

"I remind you, however, that the use of prohibited drugs is contrary to Company policy. You are, therefore, instructed to keep your system free of such substances.

During the first three years following your return to work you will, from time to time, be required by me to report to a medical facility for further testing in order to demonstrate that you are no longer using Cannabinoids or other prohibited drugs. Should a further test be positive, you may be subject to dismissal by your department for failure to follow proper instructions."

Claimant, apparently, was reinstated by Carrier subsequent to his requalification and receipt of Dr. Gebus' October 19, 1987 letter to him.

Approximately two (2) months later, on December 9, 1987, Claimant was required by Carrier to submit to another urine drug screen. Once again, however, Claimant's drug screen and confirming drug tests showed positive for marijuana; and on December 14, 1987, Claimant was removed from Carrier's service.

In a Notice dated December 21, 1987, Claimant was notified by Carrier that he was to attend a Trial which was scheduled for January 6, 1988, for the purpose of investigating the following charges:

"YOUR FAILURE TO COMPLY WITH THE CONRAIL DRUG TESTING POLICY, AS YOU WERE INSTRUCTED BY LETTER ON SEPTEMBER 01, 1987 AND SUBSEQUENT LETTER DATED OCTOBER 19, 1987 FROM MEDICAL DIRECTOR DR. G. R. GEGUS, IN THAT YOU FAILED TO REFRAIN FROM THE USE OF PROHIBITED DRUGS AS EVIDENCED BY THE URINE SAMPLE PROVIDED ON DECEMBER 09, 1987, TESTING POSITIVE."

Claimant's Trial was held as scheduled; and as a result thereof, Claimant was found guilty as charged, and he was "Dismissed in All Capacities" from Carrier's service effective January 15, 1988.

Organization filed a timely appeal of Carrier's action; and the matter is now properly before this Board for resolution.

Carrier's basic position in this matter is that Claimant was on notice that he was subject to random testing for three (3) years after he finally submitted a negative drug test result. However, only two (2) months later, Claimant was, once again, conclusively found to be using cannabis which is a substance which is specifically prohibited by Carrier's drug policy.

Carrier also argues that its drug testing policy is both reasonable and necessary because drug abuse is a serious societal problem in general, and can have a particularly devastating effect when used by employees, such as Claimant, who are responsible for the maintenance and movement of trains. Accordingly, Carrier maintains that the potential devastation in such situations "... is not limited to death or injury to railroad employees or an individual member of the public, but can expose entire communities to potential disaster." Carrier further notes that a number of particularly costly and damaging railroad accidents have recently occurred -- some involving this particular Railroad -- which have been attributed to employee drug use. Such behavior, Carrier argues, need not be tolerated; and when detected, is a dischargeable offense.

Lastly, Carrier argues that there is a great number of Public Law Board awards and Special Board awards that have upheld the reasonableness of Carrier's drug policy, and have sustained management's right to discharge employees for violation of drug testing requirements in situations similar to that involved in the instant case.

In its argumentation, Organization contends that Carrier's termination of Claimant was improper for both procedural and merits reasons.

According to Organization, Claimant's Trial of January 15, 1988, was procedurally defective because it was held in violation of Rule 20(a) of the parties' controlling Agreement which requires that such a Trial is to be conducted in a "fair and impartial" manner. In support of this charge, Organization contends that the

Hearing Officer and the Carrier witness pre-marked all of the Carrier's Exhibits prior to the Trial

As for the merits portion of this case, Organization contends that Claimant was tested unfairly because Carrier "... did not have probable cause to test Claimant for drugs, and that (Claimant) was coerced into submitting to the ..." December 9, 1987 drug test. Organization also argues that in light of Claimant's unblemished disciplinary record and his twelve (12) years of service with Carrier, dismissal is an excessive disciplinary assessment, and, therefore, was an abuse of managerial discretion.

The Board has carefully read studied and considered the complete record which has been submitted in this case, and is persuaded that Carrier's position is correct and, therefore, must be sustained. The rationale for this determination is as follows:

First, Organization's procedural objection is found to be unmeritorious. In this regard, Organization has failed to establish how the pre-marking of Carrier's exhibits -- even if such did occur -- was prejudicial to Claimant's position, or constituted reversible error on Carrier's part.

Second, as a general principle, we find Carrier's drug policy, both in its formulation and administration, to be reasonable and fair, particularly in light of the dangerous nature of the work which is involved in the railroad industry.

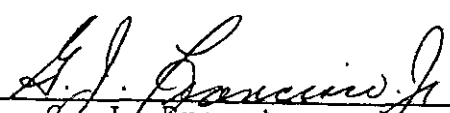
Third, as an extension of the preceding area of consideration, we concur that Carrier is entitled to expect a drug-free workforce, and to promulgate and enforce reasonable rules, regulations, policies and procedures among its employees in the pursuit of that goal.

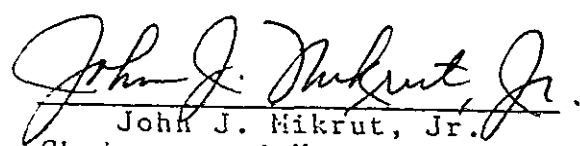
In considering the facts of record as they have been presented in this case, we find that Carrier's dismissal of Claimant was both a reasonable and proper exercise of managerial discretion. Accordingly, during Claimant's reemployment physical examination, he was found to be in violation of Carrier's drug policy. He was given an opportunity to rectify the situation -- which he did. After submitting a negative urine sample, Claimant was returned to work and he was placed on notice by Carrier that he would be subject to random drug testing, and that any further drug use on his part within a three (3) years period of time could result in his dismissal. Claimant's knowledge of the terms and conditions of his reinstatement, and his acceptance thereof as a condition of said reinstatement cannot be challenged. Despite such knowledge and acceptance, however, and with total disregard for Carrier's drug policy, as well as Carrier's clear warnings and his obvious knowledge of his vulnerability for any future violations thereof, Claimant -- a mere two (2) months later -- was once again found to be in violation of Carrier's drug policy by virtue of the detection of his continued use of marijuana.

Given the above, the Board can only conclude that Carrier's dismissal of Claimant was proper.

Award: Claim denied.


Robert O'Neill
Carrier Member


G. J. Francisco, Jr.
Organization Member


John J. Mikrut, Jr.
Chairman and Neutral Member

Issued at Columbia, Missouri on March 20, 1989