

PUBLIC LAW BOARD NO. 2774

Award No. 188
Case No. 188

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE: Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM:

"1. That the Carrier violated the current Agreement when it dismissed Mr. W. E. Thomas based on unproven charges. Said action being excessive, unduly harsh and in abuse of discretion.

"2. That the Carrier reinstate Claimant to his former position with seniority and all other rights restored unimpaired and paid for all loss of earnings, 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 had been released on May 5, 1987 by his physician to return to duty on a light-duty basis. He had been off duty as a result of an injury which allegedly occurred on April 22, 1987. When he reported for work that morning, three witnesses indicated that he had been in a

condition which made it impossible for him to work. They observed that he was disoriented, his eyes were dilated and red, his speech was slurred and irrational, and he had problems staying awake and was unable to function. They felt that he was exhibiting the characteristics of an individual under the influence of drugs.

He was then taken to a hospital for a drug screen. As a result of the drug screen, Claimant's urine was found to contain cocaine and benzodiazepine. As a result of this finding, Claimant was charged with violating Carrier's Rules 1, 2 and 6 with respect to controlled substances and being under the influence thereof, and was asked to report for an investigation. Following the investigation, Claimant was found guilty of the charges and dismissed from service.

Carrier's Rule 6 of its General Rules for the Guides of Employees provides as follows:

"The use of alcoholic beverages, intoxicants, narcotics, marijuana, or other controlled substances by employees subject to duty, or their possession or use while on duty or on Company property, is prohibited.

"Employees must not report for duty under the influence of any alcoholic beverage, intoxicant, narcotic, marijuana, or other controlled substances, or medication (whether or not prescribed by a doctor) that may in any way adversely effect their alertness, coordination, reaction, response or safety."

Petitioner argues that the fact that the urinalysis proved to be positive for certain drugs did not in any way prove that Claimant was under the influence as charged by Carrier. In fact, the Organization insists that the test involved merely indicates the presence and does not indicate the measure or amount of drug allegedly present to induce any type of impairment. There is not a set standard whereby an employee could be presumed under the influence based on a quantitative test, according to the Petitioner. Therefore, the Organization argues that Carrier has not borne its burden of proof to establish that Claimant was under the influence of any controlled substance.

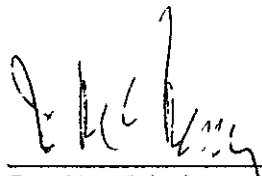
Carrier observes that Claimant was clearly under the influence of a controlled substance by virtue of the tests conducted on the day in question. He was accorded a fair trial and found to be guilty of the charges. In addition, Carrier notes, Claimant did not seek assistance from the Carrier's Employee Assistance Program Counselor in his area to overcome his drug problem.

The investigation of the charge in this dispute indicates significant evidence to support Carrier's conclusion of Claimant's culpability. There is no doubt but that his performance was seriously impaired, as evidenced by the testimony of three witnesses. In addition, the unequivocal testimony resulting from the drug screen indicates that he was under the influence of two significant drugs, both cocaine and

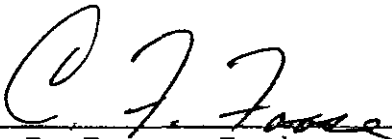
benzodiazepine. Carrier's rules are clear and unequivocal, and Claimant's culpability is proven without question. Carrier cannot and should not permit employees who violate this significant rule to remain in its service, unless there are significantly mitigating circumstances which Carrier could bring to bear. In this situation, Claimant did not seek assistance for his problem, was seriously impaired, and Carrier's actions to terminate him due to his drug abuse were in no sense arbitrary, capricious, or an abuse of discretion. The Claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



G. M. Garmon, Carrier Member

Chicago, Illinois
April 28, 1989