

PUBLIC LAW BOARD NUMBER 3445

Award Number: 45

Case Number: 45

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Laborer, Robert Patterson, 3401 Landrum Rd. #19-G, Atlanta, GA 30311, was dismissed from service on July 5, 1986 for alleged failure to comply with instructions of Carrier's Medical Director and company policy to keep his system free of prohibited drugs. Claim was filed by the Employees in accordance with Railway Labor Act and agreement provisions. Employees request he be reinstated with back pay for all rights unimpaired.

FINDINGS

Claimant established seniority as a laborer on September 30, 1980.

By letter dated June 12, 1986, Claimant was charged with failure to comply with the instructions of Carrier's Medical Director contained in letters dated November 21, December 5 and December 16, 1985 to maintain his system free of drugs. Formal investigation was held on June 18, 1986. By letter dated July 2, 1986, Claimant was advised that his violation had been established and he was dismissed.

The issue to be resolved in this dispute is whether Claimant was dismissed for just cause; and if not, what should the remedy be.

At a routine periodic physical examination on November 4, 1985, Claimant provided a urine sample which tested positive for THC (marijuana). The Carrier's Medical Director advised Claimant by letter dated November 21, 1985 that Claimant was to "rid your system of marijuana and other prohibited drugs and to provide a negative urine sample at a medical facility to which you have been referred by the Company, within 45 days of the date of this letter." Failure to comply with this Company policy could result in dismissal.

Claimant underwent a second urinalysis on November 25, 1985 in which his sample again tested positive for marijuana. By letter dated December 5, 1985, he received the same instruction as in the November 21 letter to rid his system of drugs and was urged to seek help from the Carrier's Drug and Alcohol Rehabilitation Services (DARS) counselors if he felt he had a physical or psychological dependency on drugs.

Claimant entered into evidence a negative urinalysis test dated November 25, 1985 which was conducted at a facility other than the one to which he was directed by the Carrier.

Subsequently, Claimant provided a urine sample which tested negative for marijuana and other prohibited drugs and was so advised by letter dated December 16, 1985. The letter also advised Claimant that for the next three years he would periodically be required to provide urine samples to demonstrate that he was drug free and that a positive test would subject him to dismissal.

On May 27, 1986, Claimant was directed to submit a urine specimen for analysis at a Company medical facility. The results of that test were positive for marijuana. Since the specimen was diluted in the first test--an EMIT test--, a second test (gas chromatography/mass spectrometry--GS/MS) was performed which also tested positive for marijuana. Pursuant to these test results, the formal investigation was commenced which led to Claimant's dismissal.

The position of the Organization is that Claimant was dismissed without just cause because he exhibited no signs of drug influence when he was directed to take the May 27, 1986 urinalysis. This action, the Organization argues, shows that the Carrier is applying Rule G without concern for the requirement to show probable cause.

The position of the Carrier is that Claimant was dismissed for just cause because the evidence in the record showed he violated the Company's drug policy and the specific instruction in the letters from the Medical Director to maintain his system free of drugs. Claimant's positive results in the May 27 urinalysis are reliable, the Carrier argues, and his negative results in the November 25 test performed at a non-Company facility are of no significance. Finally, the Carrier defends its strict drug policy on the grounds that employee and public safety demand it.

After review of the entire record, the Board finds that Claimant was dismissed for just cause and this claim must be denied.

The Carrier established through substantial credible evidence in the record that Claimant tested positive for marijuana in his May 27 urinalysis. The two tests confirm this and there is no allegation or evidence that the testing process was faulty. This positive test is a clear violation of the instructions in the letters of Carrier's Medical Director dated November 21, December 5 and December 16 to rid his system of marijuana and other prohibited drugs. Further, it violates the instruction in the December 16 letter that he will be required to demonstrate that he is no longer using marijuana, and it is violative of the Company policy against drug use. It is the violation of the instructions from the Medical Director and not of Rule G which resulted in Claimant's dismissal, and that violation is clear.

The Carrier's drug policy and drug testing practices are sound. They are designed to provide for the health and safety of employees and the public at large. Carrier's concern that its employees be drug free and consequently alert and responsible is good labor relations policy. Periodic testing helps ensure the integrity of the policy.

AWARD

Claim denied.

Nicholas Kumar

Neutral Member

James J.

Carrier Member

Bryce L. Ball

Organization Member

DATE:

May 31, 1988