

PUBLIC LAW BOARD NO. 3445

Award Number: 51  
Case Number: 51

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claim on behalf of W. J. Bonner, for restoration to service with seniority and other rights unimpaired, and pay at his respective rate for all time lost subsequent to November 20, 1987.

FINDINGS

Claimant entered the Carrier's service on March 1, 1972.

Following his arrest for possession of marijuana and cocaine (on September 6, 1987), Claimant was directed to take an in-service physical examination on September 15, 1987, which included a drug screen urinalysis. Claimant tested positive for marijuana and cocaine. By letter dated September 21, 1987, the Carrier's Medical Director, Dr. J. P. Salb, instructed Claimant to rid his system of prohibited drugs and to submit a negative urine sample within 45 days. The letter warned Claimant that failure to do so might subject him to dismissal and reminded Claimant of the

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Carrier's policy against drug use. Claimant was also offered the option of participation in the Carrier's Drug Alcohol Rehabilitation Services ("DARS") program. Claimant did not submit a negative urine sample within 45 days. However, he did submit a sample two days after the expiration of the 45 days, which tested positive for phenobarbital.

By letter dated November 11, 1987, Claimant was directed to attend a formal investigation on charges that he failed to comply with Dr. Salb's instructions and the Carrier's policy regarding drug use. The investigation was conducted on November 19, 1987. By letter dated November 20, 1987, Claimant was dismissed based on the evidence adduced at the investigation.

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

The position of the Organization is that Claimant was dismissed without just cause asserting that he submitted a urine sample as directed only one day late. To dismiss Claimant for that minor deviation from his instruction is "most excessive discipline."

The position of the Carrier is that Claimant was justly dismissed because he did not comply with Dr. Salb's instructions dated September 21 and with the Carrier's drug policy. The Carrier contends that Claimant did not submit a negative urine sample within 45 days and that when he submitted a sample it was positive for a prohibited substance. This not only was

willful noncompliance with Dr. Salb's letter of instruction but also with the Carrier's established policy against drug use. Further, the Carrier maintains that the discipline was appropriate to the offense.

After review of the entire record, the Board finds that Claimant was dismissed for just cause under the Agreement.

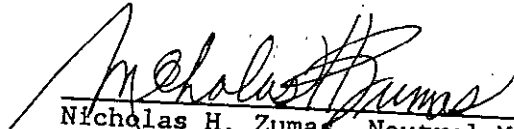
The Carrier has established by substantive credible evidence in the record that Claimant did not comply with either its established drug policy or Dr. Salb's instructions to submit a negative urine sample. Claimant was not dismissed solely because he submitted a urine sample one or two days late, as the Organization contends. Rather, he was dismissed because he used sensory-impairing drugs in September and he furthermore did not submit a negative urine sample after being instructed to do so. He was not only late in November, but he had not rid his system of drugs. Claimant was clearly guilty of failing to comply with instructions.

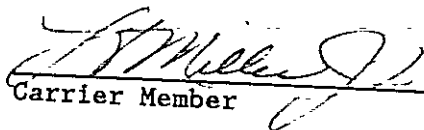
As to the discipline assessed, it is commensurate with the offense. Drug and alcohol impairment pose a threat of severe proportions to workers in the transportation industry as well as to the public at large. The Carrier has acted reasonably in establishing and enforcing its policy on this matter and has not been arbitrary, capricious or discriminatory.

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AWARD

Claim denied.

  
Nicholas H. Zumas, Neutral Member

  
Carrier Member

Date: JUNE 12, 1989

  
Organization Member