## PUBLIC LAW BOARD NO. 3514

Case No. 310 Award No. 310

PARTIESBrotherhood of Maintenance of Way Employesto-and-DISPUTE:Consolidated Rail Corporation

## STATEMENT OF CLAIM:

Appeal of Trackman, Donald M. Roberts, to have his -discipline of dismissal removed from his record.

FINDINGS: The central issues in this case are concerned with the applications of the Carrier's Drug Testing Policy. On February 20, 1987, the Carrier's Chairman and Chief Executive Officer sent a letter to each employee in which he explained the Carrier's concern for safety and how the use of illegal drugs by employees impaired its operations and, threatened the safety of the public. A summary of its Drug Policy was attached to each of these letters.

A key feature of the Drug Policy provides the employee with an \_\_\_\_\_\_ option for an evaluation by the Carrier's Employee Counseling Service, If this evaluation shows that the employee does not have an addiction \_\_\_\_\_\_ problem, the employee must provide a negative drug test within forty-\_\_\_\_\_\_ five (45) days. In those cases where the evaluation indicates an addiction problem and the employee enters an approved treatment program, he may be returned to service upon appropriate recommendation and he must provide a negative test within 125 days of the date of the initial positive test.

The triggering event for the claim at issue occurred on March 24, 1987 when the Claimant tested positive for Cannabinoids. Pursuant to its policy, the Carrier's Medical Director, by letter dated March 30, 1987, directed the Claimant to rid his system of prohibited drugs and to provide a negative urine sample within forty-five (45) days.

Subsequent to an investigation, the Carrier found the Claimant guilty of violating its drug policy because he did not provide a negative urine same. He then was dismissed from the service.

The hearing held on this matter was once postponed and, when held, did not include the Claimant although he had been properly notified. In any event, while we do not like to review the transcripts of hearings PLB No. 3514 C-310/A-310 Page 2

at which the person mainly concerned was not present, the Claimant's absence was of his choice. Moreover, the record shows that he was well-represented at the hearing by the Organization.

These are difficult cases for all concerned, particularly for the Organizati<u>o</u>ñ. It has forcefully and with skill advanced its many con- -cerns with respect to the application of the Carrier's Drug Policy. The Board has carefully considered these contentions and, while we understand the points raised by the Organization and while we do recognize that they are not without merit, we conclude that the claim must be denied.

The-safety of the Carrier's workforce, Railraod work is dangerous. as well as the public, requires positive measures to ensure that the inherent dangers are minimized. In furtherance of these efforts, the Carrier initiated a drug testing program which it announced to each of its employees, as noted earlier. The substance of the Carrier's program, as well as ones like it used by other Carriers, has been upheld by numerous arbitral Awards. Given the established facts of this case, we have no basis to arrive at an Award that runs counter to these many In the instant case, the Claimant was put on notice and, in Awards. effect, he was provided another opportunity to retain his employment. The consequences of his failure to comply with the Carrier's direction were of his choice.

AWARD

The claim is denied.

Domza Carrier Member

Neutral Member

Employee Member

Dated: August 31, 1989