PUBLIC LAW BOARD NO. 3514

Case No. 313 Award No. 313

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

STATEMENT OF CLAIM:

Appeal of Trackman Larry A. Rasnake to be returned to the service with all back pay and benefits restored.

FINDINGS: The central issues in this case are concerned with the application 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 fortyfive (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 essential facts in this case show that the Claimant tested positive for cannabinoid during a return-to-work physical examination administered on April 6, 1987. He again tested positive for cannabinoid on May 18, 1987.

These are difficult cases for all concerned, particularly for the Organization. It has forcefully and with skill advanced its many concerns with respect to the application of the Carrier's Drug Policy. In this case, among other protestations, it strongly objects that, while medical evidence was submitted into the record, medical personnel were not produced for cross-examination or corroboration of the medical documentation used by the Carrier. The Board has carefully considered PLB No. 3514 C-313/A-313 Page 2

these contentions and, while we understand the points raised by the Organization and recognize that they are not without merit under certain situations, we conclude that the claim must be denied.

The medical fact relevant in this case was the urine content. It was objective data produced by qualified persons following recognized procedures by a reputable or recognized laboratory. Under these circumstances, the medical evidence is sufficient for the Carrier to meet its burden of proof and the Carrier's medical consultant was not necessary as a witness at the trial

Railroad work is dangerous. The safety of the Carrier's workforce, 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. In the instant case, the Claimant was put on notice and, in effect, he was provided another opportunity to retain his employment. The consequences of his failure to comply with the Carrier'r.

AWARD

The claim is denied.

F. J. Domzalski Carrier Member

Neutral Member

Employee Member

Jan. Dated:

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