PUBLIC LAW BOARD NO. 3514

Case No. 315 Award No. 315

PARTIES

Brotherhood of Maintenance of Way Employes

to

-and-

DISPUTE:

Consolidated Rail Corporation

STATEMENT OF CLAIM:

Appeal of Trackman Michael D. Ford 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 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 Claimant in this case tested positive for cannabis. Pursuant to the Carrier's Drug Policy, he was instructed to provide a negative urine sample within forty-five (45) days, which he did on April 27, 1987. However, on July 1, 1987, when the Claimant was instructed to provide another urine sample, it tested positive for cannabinoid. Subsequent to an investigation, the Claimant was dismissed from the service triggering the claim before this Board.

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 respect, it has particularly raised forceful questions and objections to the Carrier's testing procedures as well as the Carrier's

failure to produce medical personnel responsible for the administration of the urine test for cross-examination to test the accuracy of the data used and to elicit relevant facts. The Board has carefully considered these contentions. We understand the points raised by the Organization and we do recognize that they are not without merit, in certain situations. However, here, the record shows that the Carrier has employed a highly reputable laboratory which used the latest pro-___ cedures and techniques to assure the accuracy of its tests. the test result or "medical fact", as distinguished from a "medical opinion", is established. Accordingly, the failure to have a medical_ person present at the hearing for purposes of cross-examination does not inviolate the fairness of the proceedings.

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. 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 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.

Carrier Member

Neutral Member

Employee Member

Dated: Jan. 8, 1990