

PUBLIC LAW BOARD NO. 4373

PARTIES	SOUTHERN PACIFIC TRANSPORTATION COMPANY )	
	(EASTERN LINES) )	
TO	AND	AWARD NO. 17
DISPUTE	BROTHERHOOD OF MAINTENANCE OF WAY )	CASE NO. 13
	EMPLOYEES. )	

STATEMENT OF CLAIM:

1. Carrier violated the effective agreement when Lafayette Division Machine Operator A. J. Green was unjustly dismissed from service.
2. Claimant Green shall now be reinstated to his former position with all seniority, vacation rights and any other rights accruing to him unimpaired in addition to all pay lost commencing August 27, 1987, and to run concurrently until Mr. Green is rightfully restored to service.

HISTORY OF DISPUTE:

Claimant was previously dismissed from service effective August 22, 1986, for violation of Rule G. On November 3, 1986, he was reinstated to service on a leniency basis conditional upon his passing the return-to-duty physical examination and agreeing to monthly random toxicological testing. Claimant was sent for a random urinalysis August 19, 1987, pursuant to his conditional reinstatement and the results of his test were positive for marijuana.

By letter dated August 27, 1987, Claimant was advised that investigation would be held on September 4, 1987, for his alleged violation of Rules B and G. The investigation was held as scheduled and Claimant was dismissed from service by letter dated September 10, 1987.

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The Organization grieved the discipline. As the dispute remains unresolved, it is before this Board for final and binding determination.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151 et seq. The Board also finds it has jurisdiction to decide the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.


Claimant denied using marijuana and claimed that his positive results must have been due to being around friends smoking marijuana. However, two tests were made on Claimant's urine specimen and the level of Carboxy THC present confirmed that marijuana had been actively inhaled or ingested.

Under the circumstances, we must conclude that Claimant violated Rules B and G. Claimant had been previously dismissed from service for the same violation and reinstated on a leniency basis. Therefore, Claimant's discharge was not improper discipline.

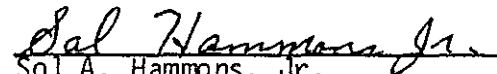
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AWARD

Claim denied.

  
William E. Fredenberger, Jr.  
Chairman and Neutral Member

  
R. O. Naylor  
Carrier Member

  
Sol A. Hammons, Jr.  
Employee Member

Dated: Feb. 26, 1990