

PUBLIC LAW BOARD NO. 4373

| | | |
|---------|---------------------------------------|-------------|
| PARTIES | SOUTHERN PACIFIC TRANSPORTATION CO.) | |
| | (EASTERN LINES)) | |
| |) | AWARD NO. 9 |
| TO | AND |) |
| |) | CASE NO. 9 |
| | BROTHERHOOD OF MAINTENANCE OF WAY) | |
| DISPUTE | EMPLOYES) | |

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement when System Laborer V. Hicks was unjustly dismissed from service.
2. Claimant Hicks shall now be reinstated to service with all seniority, vacation and all other rights due him restored intact and with pay for time lost commencing June 30, 1987, and continuing until such time as he is rightfully restored to service and with his record cleared of charge letter of June 30, 1987.

HISTORY OF DISPUTE:

At the time of the events giving rise to the claim in this case Claimant was working as a track laborer assigned to Extra Gang 76 at San Antonio, Texas.

On June 24, 1987 while Claimant was on duty the Superintendent sent him to a clinic for a random drug screen. The clinic performed both a urinalysis and a blood test. Claimant consented to the blood test but not the urinalysis. The urinalysis showed positive for marijuana. The results of the blood test were not available immediately.

The Carrier notified Claimant to appear for a formal investigation concerning the possible violation of Rule G providing in pertinent part that "[T]he illegal use, . . . while on or off duty of a drug, narcotic or other substance which affects alertness, coordination, reaction, response

or safety, is prohibited." The investigation was held as scheduled. By letter of July 17, 1987 the Carrier notified Claimant that as a result of evidence adduced at the investigation he had been found guilty of violating Rule G and was dismissed from the Carrier's service.

The Organization grieved the discipline. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and 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.

The Organization argues that the Carrier has failed to sustain its burden of proof that Claimant violated Rule G. We cannot agree.

The Organization attacks the results of the urinalysis as undependable. In the railroad industry it is well established that a urinalysis is a dependable test to disclose the presence of drugs or alcohol in a person's system. While the blood test may be more reliable we do not believe it was necessary to have the results of the blood test in addition to those of the urinalysis in order for the Carrier to substantiate its case against Claimant. In any event the results of the blood test were made available by the Carrier at the hearing before this Board, and they showed positive for marijuana.

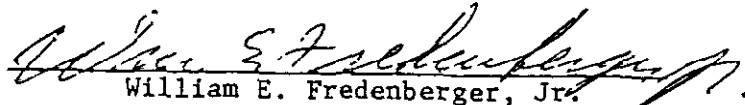
The Organization vigorously emphasizes that Claimant did not consent to the urinalysis. However, Claimant was employed by the Carrier at the time of the incident in this case by virtue of an Interim and Final Award in Case No. 45 before Public Law Board No. 3558 (Benn, Neutral) which reinstated Claimant after he had been dismissed from the Carrier's service for violation of Rule G. As a condition of Claimant's reinstatement and continued employment with the Carrier Claimant was to enter and complete the Carrier's Employee Assistance Program. Pursuant to that Award the Carrier wrote Claimant on June 9, 1987 advising him that he must follow any program recommended by the Carrier's Employee Assistance Counselor and abide by the counselor's instructions which would include unannounced alcohol/drug screens as directed. Accordingly, Claimant should have been fully aware that he was subject to random drug screening. Claimant failed to abide by the conditions of his continued employment with the Carrier when he failed the random drug screen given him on June 24, 1987.

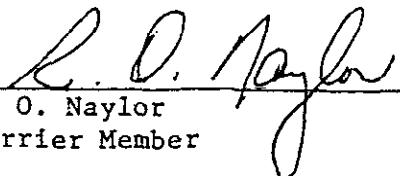
The Organization also emphasizes that Claimant on his own completed a drug treatment program after the incident giving rise to the claim in this case. We applaud the Claimant's achievement. However, it does not change the fact that Claimant failed to complete successfully the program prescribed for him by the Carrier's Employee Assistance Counselor. Having failed to do so Claimant was subject to discharge under a well established Carrier policy applicable to Rule G cases. We find no basis upon which to interfere with the logical result of that policy.

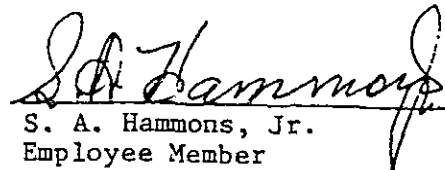
In the final analysis we must conclude that the Carrier has sustained its burden of proof that Claimant violated Rule G and further that Claimant's discharge was not improper discipline.

AWARD

Claim denied.


William E. Fredenberger, Jr.
Chairman and Neutral Member


R. O. Naylor
Carrier Member


S. A. Hammons, Jr.
Employee Member

DATED: June 28, 1988