

BEFORE PUBLIC LAW BOARD NO. 4633

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
and
INDIANA HARBOR BELT RAILROAD COMPANY

Case No. 14

Dispute: Claim of the Brotherhood:

That Track Laborer J. Webster, dismissed from Carrier's service on March 10, 1989, for failure to comply with instructions relative to IHB's Drug Testing Policy, now be restored to service.

Findings:

Claimant J. Webster was employed as a trackman and welder by Carrier. On December 23, 1988, Claimant was instructed to attend an investigation:

to determine the facts and your responsibility, if any, in connection with your failure to comply with the Indiana Harbor Belt Railroad drug testing policy as you were instructed in a letter dated February 25, 1988, from Assistant Manager Personnel, Mr. H.C. George, and subsequent letter dated March 22, 1988, from Supervisor of Administrative Services Mr. B.J. Wotuszek in that you failed to refrain from the use of prohibited drugs as evidenced by the urine sample provided on December 8, 1988, testing positive.

The investigation took place on March 2, 1989, and as a result, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to keep his system free of drugs subsequent to his return to active service in 1988. The record is clear that the Claimant submitted a urine sample which tested positive for cocaine.

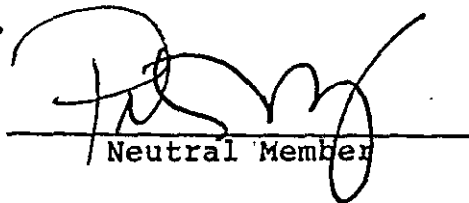
Once this Board has determined that there is sufficient evidence

in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary or capricious.

In the case at hand, the Claimant was found guilty of a very serious offense; however, the record also reveals that he has accumulated 14 years of unblemished service for the Carrier. Given that lengthy seniority, this Board finds that the action taken by the Carrier was unreasonable and excessive. Therefore, this Board hereby orders that the Carrier reinstate the Claimant once he has successfully completed a drug rehabilitation program. He shall be returned to work without back pay on a last-chance basis. This Board finds that if this Claimant is guilty of any future drug related offenses, the Carrier shall have sufficient basis to terminate his employment.

AWARD

Claim sustained in part. Claimant is to be returned to service but without back pay once he successfully completes a drug rehabilitation program.


Neutral Member


Carrier Member
& dissent


Organization Member

Date: 7.27.90