

AWARD NO. 39

Case No. 39

PUBLIC LAW BOARD NO. 4823

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
TO) versus
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: —————

Carrier's decision to remove former Southern Region Maintenance of Way Employee, L. C. Drake from service, effective January 7, 1992, was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from January 7, 1992.

FINDINGS:

This Public Law Board No. 4823 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

The record shows that former Southern Region Maintenance of Way Employee L. C. Drake (the "Claimant") tested positive for Benzoylcegonine (Cocaine) on March 5, 1991. He was then medically disqualified, and later returned to service on May 7, 1991.

In February 1991, the Carrier implemented a revised policy on the use of alcohol and drugs, effective March 1, 1991. Rule 9.0 of the new policy provides that employees who tested positive in the past ten years would be subjected to dismissal if they tested positive a second time.

The Claimant was notified in a certified letter dated November 12, 1991 from Carrier's Medical Director R. K. Khuri, M.D. that he was subject to periodic urine drug screening. He was further instructed to submit a urine specimen within two (2) hours of receipt of the certified letter, and if he was in violation of the new drug policy, he would be subject to dismissal.

On November 21, 1991 the claimant submitted a urine specimen for testing. On November 26, 1991, the test showed that the Claimant tested positive for cocaine. On January 7, 1992 the Claimant was advised that he was in violation of Rule 9.0 of the Carrier's policy on the use of alcohol and drugs, and he was dismissed from

service.

The Board finds that the Claimant was in violation of the Carrier's policy. The Board also finds that the record supports the Carrier's argument that this matter was handled consistent with the provisions of the Letter of Understanding dated June 24, 1991. Accordingly, the Claimant's removal from service was proper.

AWARD: Claim denied.


G. Michael Garmon, Chairman


Employee Member


Carrier Member

Dated at Schaumburg, IL:

October 28, 1992