

Award No. 65
Case No. 65

PUBLIC LAW BOARD NO. 4897

PARTIES
TO
DISPUTE:

Union Pacific Railroad Company

AND

United Transportation Union

STATEMENT OF CLAIM:

Claim of Yardman R. A. Marquette for reinstatement to service with all rights unimpaired, removal of all entries of this discipline from his personal record, and pay for all time lost, including payment for all wage equivalents to which entitled, with all insurance benefits and any monetary loss for such coverage while improperly disciplined.

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

This dispute is the companion for Award Nos. 64 and 57 of this Board.

Yardman Marquette was involved in the same accident as that of the Hostler, who was injured in the accident described in Award No. 57. Further, Carrier

disciplined him in accordance with the discipline accorded the Hostler in the dispute described in Award No. 64. However, this case differs from the other cases in that the thrust of Claimant's dismissal here was the issue of the alleged tampering with his urine sample in order to prevent a valid test by Claimant immediately following the accident described in the earlier two disputes. Claimant was charged with such tampering, and following the investigation, was dismissed from service for that activity in accordance with the rules.

At the outset, it must be observed that the parties entered into a stipulation agreeing that the time limit allegations by both sides were offsetting and should not be considered in the ultimate determinations made in this matter. The parties stipulated that the issue should be dealt with on its merits.

Petitioner insists that Claimant submitted to the drug test as required by Carrier on January 17, 1994 within a few hours after the accident dealt with in the earlier dispute. Petitioner believes that following the charges in the investigation, the alleged test results represented only a portion of the evidence necessary to support Carrier's conclusions of a rule violation. Petitioner alleges that the chain of custody records were not preserved in this case, and the discipline must be set aside. Further, it is argued that there is no evidence to support Carrier's allegation that Claimant tampered with his test sample. The Organization insists that the test results were negative for the drugs tested.

For that reason, Claimant had no motive to tamper with his test, as Petitioner argues. Since Carrier failed to meet its burden of proof in this case, it is the Organization's view that Claimant should not have been disciplined for the alleged violation. Claimant's dismissal was not only harsh and excessive, but totally unjustified by the facts here. For that reason, Petitioner believes that Claimant should be reinstated to service with all rights unimpaired and compensated for all time lost.

Carrier, on the other hand, believes that its witness at the investigation, the Manager of Drug and Alcohol Testing, was clear and unequivocal and established without a doubt the chain of custody procedures in this case. Carrier alleges that in this dispute, the record indicates the results of the drug test showed that a substance was introduced into the urine sample which was intended to prevent a valid analysis. Based on the evidence adduced by a reputable testing laboratory, Claimant was properly found guilty of tampering with a toxicological test. Carrier maintains that tampering or interfering with this type of test is considered under Carrier's rules as a refusal to provide a sample. For that reason, Claimant was dismissed from service for tampering with and, in fact, adulterating the drug test. The laboratory specifically identified the interfering drug as the factor in making it impossible to determine whether indeed there was drugs in Claimant's system. As a further point, Carrier maintains that Petitioner's argument that he had no reason to tamper with his test results is irrelevant. Regardless of what his motivation

was, the facts are that the adulterating agent was introduced into the test specimen by Claimant, negating any effective laboratory determination. The Board cites, as an authority to support its position, the award in Special Board of Adjustment No. 279, Award No. 595, in which the Board stated:

It is not necessary for the Board to determine why a sample was tampered with, but rather to prove that it was. The Board finds that the Carrier has so proven.

Carrier believes that it has produced substantial evidence to clearly establish Claimant's guilt of tampering with his sample. He adulterated his urine specimen in derogation of Carrier's rules. Thus, the ultimate penalty of dismissal was warranted.

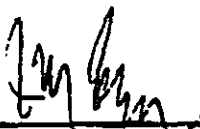
The Board believes that tampering with a reasonable cause drug test is an attempt to defeat the very purpose of the regulations dealing with drug abuse. It is counter to the Federal regulations as well as the Carrier's specific and longstanding policy and practices. Carrier's policy, in writing, states:

Tampering with a sample in order to prevent a valid test (e.g. through substitution, dilution, or adulteration of the samples) constitutes a refusal to provide a sample.

The Board, after a careful evaluation of the entire record, has concluded that the evidence undoubtedly makes it apparent that Claimant was guilty of adulterating his urine sample. There is nothing in the record or in the handling of the urine sample to cast any doubts on this factual conclusion. Based on this determination, there is no doubt but that Carrier was correct in its conclusions and the dismissal was not only appropriate but warranted under the circumstances.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



Dennis J. Gonzales
Carrier Member



G. A. Eickmann
Employee Member

Omaha, Nebraska

~~July~~ 24, 1995

Aug.