

PUBLIC LAW BOARD NO. 4950

NEW JERSEY TRANSIT RAIL OPERATIONS, INC. :
"Carrier" : Case No. 93
vs. :
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES : Award No. 86
"Organization" :

OPINION OF THE BOARD

In 1993, Claimant, R. Jones, entered Carrier's Employee Assistance Program. As part of his participation in that program, he was subject to unannounced follow-up drug and/or alcohol testing. Claimant agreed that a positive result in any of these tests would result in his dismissal.

On or about August 24, 1994, Carrier issued Claimant a notice of hearing in connection with the following:

On August 15, 1994 you arrived at Maplewood Medical Services and were tested for Drugs and Alcohol in accordance with the terms of your E.A.P. Agreement and Waiver dated June 4, 1993. The results of that alcohol test was positive and you were removed from service.

Therefore, in connection with this matter and in accordance with Section IV. D. 3. (page 28) "Mandatory EAP Participation" of NJ Transit's Drug and Alcohol Free Workplace Policy you are charged with the alleged violation of section IV. A. 3. (page 6) "Prohibitions" of same policy.

Following the hearing, Carrier found Claimant guilty as charged and assessed him the penalty of dismissal in all capacities. Among the contentions made by the Organization was

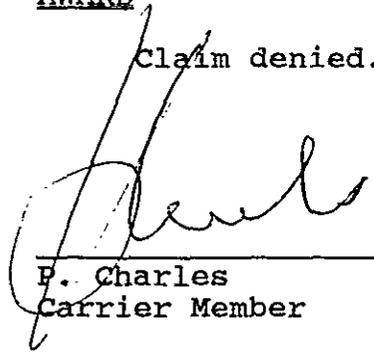
that on August 15 the breathalyzer malfunctioned and Claimant's guilt has therefore not been established.

The Board has determined that the claim must be denied.

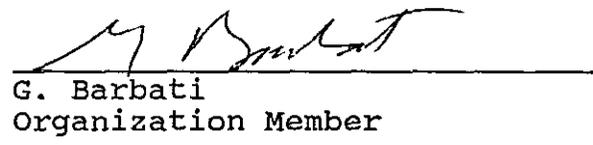
There is substantial evidence in the record to establish Claimant's guilt as charged. Pursuant to the terms of Claimant's participation in the E.A.P., Carrier acted within its authority in administering the test to Claimant on August 15. The record evidence shows that Claimant tested positive. The evidence does not support the Organization's contention that the breathalyzer malfunctioned. Finally, in light of this positive test result Carrier did not act arbitrarily or capriciously in imposing the penalty of termination.

AWARD

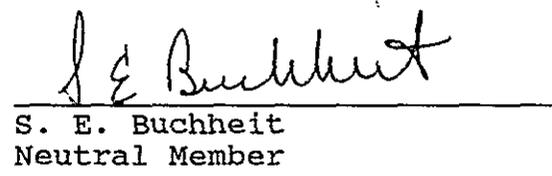
Claim denied.



P. Charles
Carrier Member



G. Barbati
Organization Member



S. E. Buchheit
Neutral Member