

PUBLIC LAW BOARD NO. 5606

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM:

1. The dismissal of Trackman Patrick P. Smith for his alleged violation of Rule GR-G on November 18, 1996 he tested positive for cannabinoids was without just and sufficient cause.
2. As a consequence of the aforesaid violation, Trackman Patrick P. Smith shall now be reinstated to service in accordance with Article 26. (Claim No. MW-97-15)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The Claimant's dismissal from service arises from a violation of General Safety Rule GR-G in that the Claimant failed to pass a post-accident drug/alcohol screen test that he was subjected to on November 18, 1996.

General Safety Rule GR-G reads:

GR-G. The use of alcoholic beverages, intoxicants, drugs, narcotics, marijuana or controlled substances by employees subject to duty, when on duty or on company property is prohibited and is sufficient cause for dismissal.

Employees must not report for duty, or be on company property under the influence of or use while on duty or have in their possession while on company property, any drug, alcoholic beverage, intoxicant, narcotic, marijuana, medication or other substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety.

Employees using prescription or non-prescription medications must determine from their physician or pharmacist whether or not the medication will impede the safe performance of their duties.

At the company hearing the Carrier introduced evidentiary documentation in support of the finding that the Claimant tested positive for cannabinoids or marijuana in violation of Rule GR-G, supra. The record also reveals that during a discussion of the test results with the Health Resources-Medical Review Officer that the Claimant, when asked if he had recently used marijuana, said that he had used marijuana the weekend before the drug screen test. Further, the record shows that upon inquiry, the Claimant told the Medical Review Officer that he did not have a prescription for the use of marijuana.

Notwithstanding the test findings and statements of the Claimant to the Medical Review Officer, the Organization contends that the Claimant should be cleared of all charges and returned to duty on the basis of what it maintains was a failure on the part of Carrier supervisory officials to arrange for medical attention when the Claimant allegedly reported to them that he had sustained an injury to his back on Friday, November 15, 1996. The Organization says that since the supervisors did not provide attention to the asserted injury at that time, the Claimant had no recourse but to contact his personal physician over the weekend and make an appointment to see that doctor on Monday, November 18, 1996.

It was on this latter date, November 18, 1996, when the Claimant called his supervisor at Rigby, Maine to report that he would not be in to work because he had a doctor's appointment relative to an injury which had occurred at work the previous Friday, that the Claimant was told to come into the office at Rigby so that arrangements could be made for him to see a Carrier physician. And, it was as a part of the company directed physical examination procedure that the Claimant was required to submit to the aforementioned alcohol/drug screen test.

It is therefore the position of the Organization that the Carrier had only until the end of the shift or such time as the Claimant was released from duty on November 15, 1996, i.e., the date on which it maintains that the Claimant sustained and reported the injury, to have required that the Claimant submit to an alcohol/drug screen test pursuant to FRA regulations for reasonable cause testing.

The Carrier makes the unrefuted statement of record, as it did during the handling of the claim on the property, that the test provided the Claimant was given under the authority of its own company policy, and not pursuant to the authority of the FRA regulations. The Carrier says that it does not test under the authority of the FRA but under the authority of its own policy, a policy which, as allowed by FRA regulations, is more stringent than the FRA regulations. The Carrier submits that under its policy, when an employee claims an injury to the extent that medical treatment is required, such employee is required to be drug/alcohol tested in order that substance abuse might be eliminated as a cause of the

accident. Further, the Carrier submits that no time limits are set forth in its policy for conducting such testing. Thus, the Carrier says that while it finds reason to question that the Claimant did seek medical attention on the date of the alleged injury, November 15, 1996, that even assuming, *arguendo*, the Claimant did, its decision to test him on Monday, November 18, 1996, was in full compliance with the company policy.

The Organization also argues that the Claimant is not guilty of violation of Rule GR-G in that at the time, it says, he, *volunteered*, to take the drug test on November 18, 1996, he was not on duty, was not reporting for duty, and was not subject to duty, nor under the influence when the test was given.

Contrary to the contention that the Claimant volunteered to be drug tested, testimony of record supports the finding that he was directed to do so by the Carrier. Moreover, as the Carrier points up, since the Claimant did not report that he was unavailable for service until Monday morning, under the terms of the applicable overtime rules it must be considered that the Claimant was subject to duty over the weekend, or a period of time when he admitted, as stated above, that he smoked marijuana. Under the circumstances, there is no question in view of the statement made by the Claimant and the results of the drug screen test that he was found to be in violation of Rule GR-G.

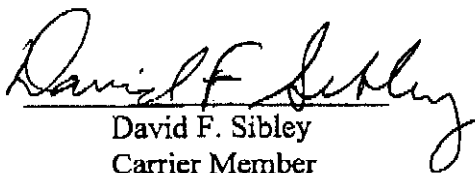
The Board finding no merit in either the procedural or merits arguments advanced by the Organization, and it being without question that the Carrier has a responsibility and duty to assure that its employees remain alcohol and drug free in the light of the dangers inherent in the railroad industry, it must be concluded that the Carrier had sufficient just cause to terminate the Claimant from its service. The claim will therefore be denied.

AWARD:

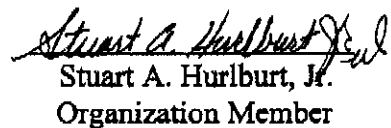
Claim denied.



Robert E. Peterson
Chair & Neutral Member



David F. Sibley
Carrier Member



Stuart A. Hurlburt, Jr.
Organization Member

(I dissent to the above.)

North Billerica, MA
December 22, 1997