

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5735
John C. Fletcher, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
Richard A. Hobbs, Carrier Member

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LABOR RELATIONS
AND PERSONNEL

Brotherhood of Maintenance of Way Employees
and
Indiana Harbor Belt Railroad Company

Case No. 2
Award No. 2

Date of Hearing - September 6, 1995
Date of Award - March 6, 1995

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Trackman M. Ogletree for this alleged failure to comply with the Carrier's drug testing policy when he allegedly tested positive for prohibited drugs on July 22, 1994, was without just and sufficient cause and represents disparate treatment. (Carrier's File Mw-94-019).
2. Trackman M. Ogletree shall now be reinstated to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

FINDINGS:

Public Law Board No. 5735, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the disputes(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

Claimant, a short term employee with a hire date of July 1, 1993, was required to submit to a urinalysis test on February 23, 1994. The results of this test were positive for cocaine. He was disqualified from service under Carrier's Drug Testing Policy. Claimant, at that time, as provided in the policy, was given 45-days to provide Carrier with a negative urine sample, after which he would be allowed to return to service. He was told that failure to comply would subject him to dismissal, and that if he desired he could receive assistance from Carrier's Employee Counselor. On March 25, 1994, Claimant provided Carrier with a negative urine sample. He was returned to active service on April 4, 1994, with instructions to keep his system free of prohibited substances. Further, as a condition of his return, he was told that he would be required to submit to random testing during the next three years.

On July 22, 1994, Claimant was required to submit to a follow-up test. This test was positive for cocaine and Claimant was notified on August 9, 1994

that he was cited to attend an investigation on a charge of failure to comply with Company Rules to refrain from using prohibited substances. Following the investigation, which was held on August 24, 1994, Claimant was dismissed from service.

The Board has reviewed the investigation transcript and concludes that it has adequately been demonstrated that Claimant was indeed at odds with Company's Drug Testing Policy, when he testified positive for prohibited substances on July 22, 1994. There is no evidence to suggest that Claimant's sample was not handled properly. The chain of custody is clear, and the analysis and report of the lab is accurate and valid.

Further, there is no evidence of disparate treatment in Claimant's situation, as suggested in the Organization's Statement of Claim, and oral pleadings before this Board. In Claimant's brief career with Carrier, he was absent without authority on two occasions, received a reprimand for failure to properly operate a ballast regulator resulting in a collision with another piece of equipment, and twice tested positive for prohibited substances. This record is not one suggesting mitigation of any sort. Accordingly, this Board is without any basis to effect any modification of the discipline assessed, as asked for by the Organization.

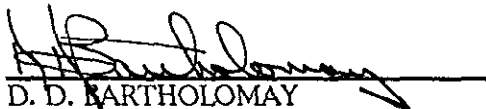
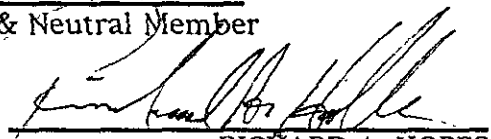
The claim will be denied.

A W A R D

Claim denied.



John C. FLETCHER, Chairman & Neutral Member


D. D. BARTHOLOMAY
Employee Member
RICHARD A. HOBBS
Carrier Member

Dated at Mount Prospect, Illinois, March 6, 1996