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BEFORE PUBLIC LAW BOARD NO. 5839

AUG 19 1996

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES <sup>B</sup> M. W. E.

and

UNION PACIFIC RAILROAD COMPANY

(Former Oklahoma-Kansas-Texas Railroad)

Case No. 10

**STATEMENT OF CLAIM:**

1. The dismissal of R. C. Hill, SSN 430-23-2163, for allegedly using an illegal or unauthorized drug as evidenced by the positive test result of a follow up drug test given on June 27, 1994 was unwarranted, without just and sufficient cause, on the basis of unproven charges and in violation of the agreement.

2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to the Carrier's service with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

**FINDINGS:**

This claim arose when the Claimant was dismissed from the Carrier's service after testing positive for marijuana in his system during a random drug screen on June 27, 1994. Claimant's record included a previous dismissal in 1990 and then a reinstatement in 1991 after he completed the Carrier's Employee Assistance Program. The Claimant was reinstated to service but only if he met certain conditions. These conditions included being subject to random follow-up drug screens for a period of five years, indefinitely remaining drug free, and avoiding any violation of any Carrier rules dealing with drugs or alcohol.

After a hearing was conducted, which the Claimant did not attend, it was determined that he was guilty of not meeting the conditions of his reinstatement. He did not remain drug-free. Consequently, the Claimant was dismissed from service.

The parties being unable to resolve the issue, this matter comes before this Board.

This Board has reviewed the procedural arguments raised by the Organization and we find them to be without merit.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that Claimant was guilty of failing to live up to the terms of his reinstatement. The record reveals that the Claimant was reinstated on December 4, 1991, on a leniency basis with several conditions. One of those conditions was to remain drug-free. On June 27, 1994, he failed a random drug test; the results showing positive for marijuana. The investigation was held on July 28, 1994, and the Claimant did not attend. The results of Claimant's positive drug test were introduced into evidence. Claimant was notified both before and after the hearing. The evidence that was developed during the investigation established that the Claimant had violated the terms of his reinstatement.

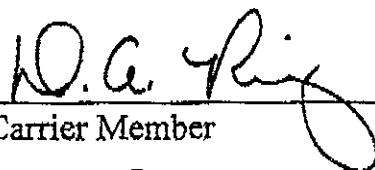
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.


The Claimant in this case had been previously terminated for violating the Carrier's rules relating to drugs and alcohol. He was put back to work on a leniency basis with several conditions. He failed to live up to those conditions and it was proven that he had unlawful substances in his system on the date of the random test. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it again terminated his employment as a result of his failure to live up to the terms of his reinstatement. Therefore, the claim must be denied.

**AWARD**

Claim denied.

  
PETER R. MEYERS  
Neutral Member

  
Carrier Member  
DATED: July 25, 1996

  
Organization Member  
DATED: 7-29-96