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B. M. W. E.

BEFORE PUBLIC LAW BOARD NO. 5839

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

(Former Oklahoma-Kansas-Texas Railroad)

Case No. 8

STATEMENT OF CLAIM:

1. The dismissal of R. J. Tollett, SSN 448-62-8261 for allegedly being insubordinate when he failed to comply with instructions to remain drug free as evidenced by a positive drug test on June 29, 1993, 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 benefits unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

On March 2, 1992, the Claimant tested positive for amphetamines during a yearly drug screen. Claimant was disqualified from service. He was advised that if he successfully completed the Carrier's Employee Assistance Program (EAP), tested negative for drugs during a "requalifying test", submitted to follow-up drug testing for five years, remained drug free indefinitely, and avoided any violation of Carrier rules involving drugs/alcohol he would then qualify for return to the Carrier's service.

Claimant had complied with all of the above, and, consequently, was reinstated to service effective March 3, 1993.

On June 29, 1993, the Claimant underwent a three-year follow-up drug screen and once again tested positive for drugs. The Claimant was notified to appear for a formal investigation on the charge of allegedly being insubordinate when he failed to comply with the Carrier's instructions to "remain drug free indefinitely". Claimant was also charged with being absent without authority from work on July 6, 7, 8, 12, and 13, 1993.

Claimant was found guilty as charged and dismissed from service by letter dated September 20, 1993.

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

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 the Claimant was guilty of violating the terms of his reinstatement by testing positive for drugs during a follow-up test in June of 1993.

The record reveals that the Claimant was given a drug screen on March 2, 1992, as part of the Carrier's regular physical examination. At that time, he tested positive for amphetamines. He was then advised that he must complete the Employee Assistance Program and test negative for drugs as part of a requalifying test, as well as submit to follow-up drug tests for five years and remain drug-free indefinitely.

The Claimant was reinstated to service on March 3, 1993. At that time, he was told that he would have to submit to random follow-up drug testing for a period of three years. Claimant was administered a drug screen on June 29, 1993, and tested positive.

The Claimant was also absent from work without authority on July 6, 7, 8, 12, and 13.

The Claimant was notified to report for a formal hearing regarding his being absent without authority and later was notified that the investigation would also include the charges that he was insubordinate for failing to comply with the instructions relating to his remaining drug free. The hearing was finally held on September 8, 1993.

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

This Board has reviewed the record of proceedings from that hearing and it is clear that the Carrier met its burden of proof with respect to both charges. The Claimant has thereby subjected himself to disciplinary action.

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.

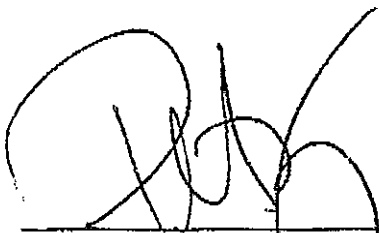
In this case, the Claimant was clearly told in 1992 that he had to remain drug-free. He was also informed that he would be subject to random testing. At one of those random tests, he came up positive. In addition, the Claimant was guilty of being absent without permission on several days.

Given the previous background of this Claimant and the seriousness of this offense, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or

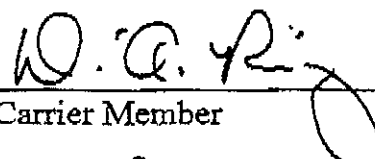
capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member



Carrier Member

DATED: July 25, 1996



Organization Member

DATED: 7-29-96