

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 13
)
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY) Award No. 12
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. M. Gevaudan, Carrier Member

Hearing Date: September 29, 2000

STATEMENT OF CLAIM:

1. The dismissal of Trackman E. Gonzalez for his alleged violation of Maintenance of Way Rule 1.16 on November 8, 1999, was without just and sufficient cause.
2. As a consequence of the violation referred to in Part (1) above, Claimant's record shall be cleared and he shall be allowed to return to work immediately with compensation for all lost wages.

FINDINGS:

Public Law Board No. 5905, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On November 12, 1999, Carrier notified Claimant to report for an investigation on November 19, 1999, concerning "the charge that at about 11:55 a.m. on November 8, 1999, when on duty as a Trackman, you were found in a condition that would adversely affect the performance of your duties, in violation of Rule 1.16" The hearing was held as scheduled. On November 24, 1999, Carrier advised Claimant that he had been found guilty of the charge and had been dismissed from service.

Our review of the record reveals that Carrier proved the charge by substantial evidence. The record reveals that on November 12, 1999, Claimant left his position without permission,

and without contacting supervision. Claimant had been providing flag protection for CSX Signal Department employees who were working near Carrier's City Track. Carrier's Maintenance Supervisor located Claimant in a Burger King restaurant. Claimant maintained that he had left to use the bathroom because he had found the portable toilet at his work area unsuitable.

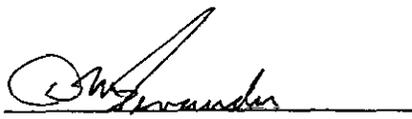
The Maintenance Supervisor, believing Claimant's action to be irrational, required Claimant to submit to a reasonable cause drug screen. The results of the drug test were positive for cocaine. Claimant took no exception to the basis for the drug screen or to the procedures used. He did not deny that he was on duty with cocaine in his system.

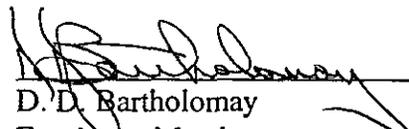
The Organization contends that Claimant should be given an opportunity to return to service, conditioned on his enrolling in and competing an appropriate employee assistance program. The Board cannot agree. Claimant was a relatively short tenured employee. He was on duty with cocaine in his system. He engaged in conduct which posed a serious danger to the CSX employees he was supposed to protect. Under these circumstances, we cannot say that the penalty imposed was arbitrary, capricious or excessive.

AWARD

Claim denied.



Martin H. Malin, Chairman

D. M. Gevaudan
Carrier Member

D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, December 28, 2000.