

PCBLIC LAW BOARD NO. 6059

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION)

VS

CSX TRANSPORTATION, INC.

NMB CASE NO. 50
AWARD NO. 50

STATEMENT OF CLAIM:

Appeal filed on behalf of Foreman P. O. McGruder (ID 097720) to be restored to service with full seniority rights unimpaired, pay for all lost time, including Health and Welfare expense incurred while dismissed from service on or about May L0, 1999 until restored to service and the removal of unfavorable entry from his service record.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute **are** respectfully Carrier and Employees within the meaning of the Railway Labor **Act, as** amended. This Board has jurisdiction of **the** dispute here involved. The parties to this dispute were given due notice of hearing thereon.

Claimant here involved was charged with insubordination following a report that he had provided a urine sample adulterated with Nitrates on May 3, 1999. Following formal investigation Carrier found claimant guilty of the charge against him and as a result thereof claimant was dismissed from service.

The record before this Board indicates that claimant was first employed on **March** 6, 1970, therefore. at the time this incident occurred he had been an employee for **more** than 29 years.

This Board has previously issued an Interim Award to the effect that claimant should be **returned** to service with all rights unimpaired, with the stipulation that he successfully pass a physical examination, including drug and alcohol testing, and with **the** further requirement that he enter the Employee Assistance Program. Inasmuch as claimant has already been returned to active service, this award deals with claimant's request that he now **be** compensated for all time lost.

The Board has had the opportunity to thoroughly review the transcript of hearing together with all other documents presented by the parties, including claimant's service record which revealed only two minor disciplinary entries during his 29 years of service.

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It is evident from the record that claimant did add Nitrates to his urine while supplying the sample on May 3, 1999. Claimant so testified during the investigation. Under such circumstances the Board must find that Carrier did not err when it rendered its decision finding claimant at fault. The Board, however, does not believe that permanent dismissal from service was warranted in this particular case, particularly when it is noted that employees who are found to have used illegal substances are given the opportunity to salvage their careers by entering into and following the requirements of the Employee Assistance Program.

Since the interim award issued by this Board has given this claimant the opportunity to salvage his career, he is now afforded the opportunity to continue in employment until reaching the point where he is able to retire. However, inasmuch as **he admittedly** failed to supply an **unadulterated** sample for testing, the Board is not inclined to now reward him by allowing him pay for time lost. Claimant was at fault and his claim for lost time cannot be allowed.

AWARD

Claimant has **been returned** to active service and **his** claim for payment for time lost is hereby denied.


F. T. Lynch, Neutral Chairman


C. J. Wexel, Carrier Member


J. L. Mateer, Employee Member

Award date August 11, 2000