

Public Law Board No. 6204

Parties to Dispute

Brotherhood of Maintenance of Way)	
Employees)	
)	
vs)	Case 22/Award 22
)	
Burlington Northern Santa Fe)	

Statement of Claim

1. That the dismissal of Mr. Curt Goble for alleged violation of Section 7.9 of Burlington Northern Santa Fe's policy on the Use of Alcohol and Drugs on June 16, 2000 for knowingly and willfully adulterating his urine sample provided for a random FMCSA drug test INV. 00-056 was arbitrary, capricious and exceedingly harsh.
2. As a consequence of the violation referred to in Part (1) above, Claimant Curt Goble shall be restored to service with seniority unimpaired beginning September 27, 2000 with compensation to include all wage, promotional opportunities and fringe benefit losses suffered.

Background

The Claimant was advised to attend an investigation in order to determine facts and place responsibility, if any, in connection with his alleged adulteration of the urine specimen which he provided during a random FMCSA drug screen test on June 16, 2000. After a postponement an investigation into this matter was held on September 14, 2000. Thereafter the Claimant was advised on September 27, 2000 that he was found guilty of violating section 7.9 of the Carrier's June 16, 2000 policy on the use of alcohol and drugs. He was told by this notice that he was being dismissed from service of the Burlington Northern Railroad for "...knowingly and willfully adulterat(ing) the urine

specimen..." that (he) provided for a random drug screen. [REDACTED] This discipline was appealed by the Organization, and denied by the Carrier, in the proper manner under Section 3 of the Railway Labor Act and the operant labor Agreement up to and including the highest Carrier officer designated to hear such. Absent settlement of the claim on property it was docketed before this Board for final adjudication.

Discussion

The Claimant to this case, Curt Goble, held assignment as a machine operator as member of the BMW craft at the time of the incident in question. His date of hire in was May 15, 1979. The policy at stake here is found the Carrier's applicable Policy on the Use of Drugs and Alcohol. Although the Carrier provides a full copy of that policy for the record¹ only the following provisions are specifically pertinent here.

7.9

Any one or more of the following conditions will subject employees to dismissal:

Adulteration, substitution or dilution of urine samples.

The Claimant was scheduled for and took a random drug screen test on the date of June 16, 2000. After the test results came back the manager of the Carrier's drug and alcohol testing program wrote the following to the Washington Division engineer at Spokane, Washington:

¹Carrier's Exhibit 5.

"Re: Curt E. Goble

"The aforementioned employee's FMCSA random urine drug screen test conducted on date June 16, 2000 revealed the presence of an adulterant. Adulterating a urine drug specimen constitutes a refusal to test.

"This information is being relayed to you for formal administrative action. You are instructed by the Medical & Environmental Health Department to initiate the investigative process and immediately remove this employee from service pending results of the investigation...a waiver of investigation is not allowed."²

Thereafter the Claimant was advised of an investigation which was held as noted and he was dismissed from service as a result of the investigation's findings.

Testimony at the investigation is as follows.

According to the Spokane division engineer the June 16, 2000 random test which the Claimant took was properly conducted under regulations of the FMCSA.

There is no evidence in the record to the contrary. After this engineer was advised by the written correspondence cited above, and by phone from Fort Worth, that the Claimant's test results showed the presence of an adulterant he then had a talk with the Claimant.

According to this witness the Claimant told him that he had adulterated the specimen and he explained why he did this. This was told to the division engineer in the presence of an assistant division engineer. This witness states that the Claimant was forthright and honest about what he had done.

Testimony at the investigation by the Claimant is that he did adulterate the urine specimen which he provided for a random drug test on the date of June 16, 2000. In

²Carrier's exhibit 1.

explanation he states that what he did was the result of a snap decision which he made out of fear that the prescription sleeping pills he was taking would show up positive on a drug screen. He states that "...absolutely..." he knew that what he had done was a bad decision the day after he did it "...whether he got caught or not...", and that he knew that it "...was wrong...".

The Claimant states that he asked the doctor who prescribed the sleeping pills if they would affect his performance as a machine operator or truck driver and he was told that although the pills were potent their effects would wear off in 2 to 4 hours after they were taken. This statement is not disputed at any point in the record.

The prescription for this medication was entered into the record by the Claimant. It is dated March 14, 2000.

The Claimant states that he was told by the doctor that the use of the sleeping pills would most likely show up on a drug analysis test. The Claimant had not told his supervisor that he was on this medication. He states that he was not fully aware of the full meaning of the Carrier's policy on drugs and alcohol prior to adulterating the test although he had been given a written copy of this policy. He states that he had "...not read..." the policy. He states that he was under the impression that he was covered by the waiver policy for having adulterated a urine specimen.

The Claimant states that although the doctor wrote the prescription for him on March 14, 2000 he was hesitant to have it filled because of the fear he had of the pills showing up on the drug screen if he took any. Nevertheless, he did ultimately have the

prescription filled in "...late May of 2000..." and over a period of "...two or three weeks..." took a total of 4 of the sleeping pills. He states that he took a pill at about 11:00 PM on the evening of June 15, 2000. He took the drug screen at about 9:30 AM on the morning of June 16, 2000.

Findings

A review of the record warrants the following conclusions. The evidence with respect to the merits of the case is clear. The Claimant violated Rule 7.9 of the Carrier's drug and alcohol policy when he adulterated a urine specimen when he took a random drug screen test on the date of June 16, 2000. Not only do the test results from the lab show that the sample was adulterated, but the Claimant freely admitted on property, and at the investigation when he testified, that he was guilty as charged. Although the Claimant admits that what he did was the result of what he calls a snap decision, and that what he did was wrong, this does not change the fact that the rule in question was violated. There was a serious violation of company rules. On merits the claim cannot be sustained.

There remains only the issue of the quantum of discipline. A Board such as this cannot issue a ruling on leniency basis. Decisions related to leniency are reserved for the employer.

This Board can, however, review extenuating circumstances, as they exist, in order to ascertain whether the discipline assessed in any case may have been arbitrary or

capricious.

The Claimant is a long-term employee according to standards normally accepted by arbitral forums such as this. He has over twenty years' seniority with the Carrier. He has a good disciplinary record. According to testimonials by a variety of fellow employees who wrote them on the Claimant's behalf, and which are part of the record assembled for this case by the Organization, the Claimant was a conscientious worker and an asset to the Carrier.³

The Board observes, additionally, that this is one of those idiosyncratic cases where there was a violation of an employer's drug and alcohol policy which centered on neither drugs nor alcohol, as normally understood, but on a prescription medicine which the Claimant was taking for a reason which had been prescribed by his doctor which was a sleeping disorder. The Claimant's ill-advised decision to attempt to circumvent the random drug screen was not to hide drug or alcohol use per se, but to hide the traces in his system of this prescription medication which he was advised might show up after taking it.⁴ Obviously, this bad decision was preceded by an earlier one by the Claimant which was not to have told supervision that he was taking the prescription sleeping medication in the first place. It is clear from the record, and the Claimant's testimony in

³Various entries found in Employees' Exhibit A.

⁴It is not totally clear, from the record, whether the prescription medicine in question really would have showed up on a drug screen or not in view of additional information which the Claimant obtained from an evaluation after going to the EAP counselor after he was suspended. Irrespective, the Claimant thought traces of the medication might have showed on the drug screen, in view of what his doctor told him, which was why he tried to vitiate the results of the test

this case, that he both realized the gravity of his bad decision to violate the Carrier's rules shortly after he did this, and that he made no attempt to cover up what he had done. It is also to his credit that he went to the Carrier's EAP, talked with the counselor there, and had an evaluation.

In view of these extenuating circumstances the Board will rule that this employee be given an additional chance to show his worth to the employer and that he be reinstated as a member of the craft on the BNSF. This ruling does not denigrate the gravity of the offense involved, in the mind of the Board, nor does it set precedent for any other claims involving the violation of the rule at bar. In view of the full record of this case the ruling here by the Board is but a reasonable one in this specific instance and it shall be made on last chance basis.

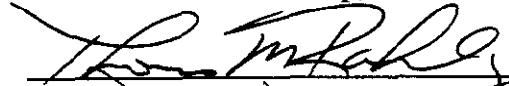
The Claimant shall be reinstated to his position with the Carrier. He shall receive no compensation for time held out of service because of the gravity of his offense, but his seniority shall remain unimpaired. The Claimant shall be required to take any and all physical exams, including a drug screen, prior to his return to service, as required by company policy. All other requests in the statement of claim are denied.

Award

The claim is sustained only in accordance with the Findings. Implementation of this Award shall be within thirty (30) days of its date.



Edward L. Suntrup, Neutral Member



Thomas M. Rohling, Carrier Member



Roy C. Robinson, Employee Member

Date: Sept 18, 2002