

PUBLIC LAW BOARD NO. 6221

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NEW JERSEY TRANSIT RAIL OPERATIONS, INC. :  
"Carrier" : Case No. 4  
vs. :  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES : Award No. 4  
"Organization" :  
(F. Euell)  
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IN CONNECTION WITH:

On February 2, 1999 the office of the Division Engineer was notified that the result of your follow-up drug test was positive for cocaine and as a result, you were unavailable for work. That test was conducted as part of your Mandatory EAP Participation as outlined in a disciplinary waiver dated 6/18/98 and your Treatment Plan Agreement with the EAP dated 6/18/98.

Therefore, in connection with this matter you are charged with violation of: your Mandatory EAP Participation as outlined in a disciplinary waiver dated 6/18/98 and your Treatment Plan Agreement with the EAP dated 6/18/98. NJ TRANSIT's Drug and Alcohol-Free Workplace Core Policy, Section V.A. Prohibited Behavior and VIII. C. Mandatory EAP Participation.

OPINION OF THE BOARD

Carrier contends that the facts of this matter, as set forth above, establish that its actions towards Claimant were not arbitrary or capricious and that the penalty of termination was appropriate. Carrier asserts that as a result of policy, procedure and past practice, and in light of the gravity of the admitted offense, the discipline cannot be reduced. The Organization contends that Claimant should be returned to work contingent upon his continued participation in the drug treatment program subject

to whatever testing needs to be done by the program so that he can continue as a productive employee with Carrier.

The Board has determined that the claim must be denied.

Carrier has established that Claimant's actions did indeed violate policy, procedure and past practice. Claimant initially tested positive in a random drug test in 1998. Claimant's positive test result was in violation of Carrier's Drug and Alcohol-Free Workplace Core Policy. In response, Carrier offered Claimant the opportunity for rehabilitation. Claimant availed himself of that opportunity, signing on June 18, 1998 an agreement whereby he waived his right to a hearing and agreed to certain conditions, including that a positive test result on a future, unannounced, follow-up drug test will result in my dismissal. Also on June 18, 1998, Claimant signed a "Treatment Plan Agreement For Drug and/or Alcohol Testing in Connection With the EAP Participation" in which he agreed to future periodic testing and that "if the periodic test is positive for drugs or alcohol I will be terminated from my employment." Carrier has further established, and Claimant has candidly admitted, that in early 1999 he did test positive for cocaine and that this positive test result occurred due to drug usage by Claimant.

The Board does not take Claimant's termination lightly. As well argued by the Organization, Claimant was a long term employee who provided good service to Carrier. Claimant has also admirably responded to his 1999 positive test result, with the Organization's assistance, by undertaking further rehabilitation. The Board

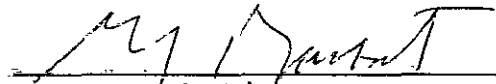
appreciates Claimant's representation that he is now drug free and would not further disappoint Carrier. Under the circumstances here present, however, including Claimant's own agreement that a positive test result would result in his termination, the Board is not privileged to show leniency towards Claimant and set aside his termination. Thus, notwithstanding the Claimant making a positive impression before this Board, and the Board's best wishes to the Claimant for his continued rehabilitation and employment elsewhere, this claim must be denied.

AWARD

Claim denied.



P. Charles  
Carrier Member



G. J. Barbati  
Organization Member



S. E. Buchheit  
Neutral Member