

**PUBLIC LAW BOARD NO. 6621**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**And**

**UNION PACIFIC RAILROAD COMPANY**

**Case No. 6**

**Statement of Claim:** Claim of the System Committee of the Brotherhood that:

- (1) The Union Pacific Railroad Company erred and violated the contractual rights of Laborer D. Santiago, Claimant, when it found him guilty of violating the Union Pacific Railroad's Drug & Alcohol Policy and assessed him UPGRADE Level 5 discipline, permanent dismissal, account Claimant allegedly tested positive for marijuana during a follow-up drug test administered on 12/17/2001.
- (2) The Carrier shall reinstate the Claimant with full seniority rights unimpaired and compensated for net wages, lost pay and all record of this incident be expunged from the Claimant's record.

**Background**

On December 17, 2001, Claimant David Santiago was given a follow-up drug test, and the results of the test were positive for marijuana. As a result of a hearing held on January 17, 2002, Claimant was found to have violated Rule 1.5 and the Union Pacific Drug & Alcohol Policy, effective March 1997. He was dismissed from service.

It is undisputed that Claimant had been medically disqualified on the basis of a positive drug test in 1999. At that time, he was afforded the one-time opportunity to enter into the Employee Assistance Rehabilitation /Education Program. He accepted the Carrier's offer, and on August 3, 1999, he signed a conditional Reinstatement Agreement in which he committed to main drug-free indefinitely after returning to service.

The Organization has challenged Claimant's dismissal, contending that he was entitled to a "Waiver for a One-Time Return to Service" on the grounds that he had never been previously charged with violating Rule 1.5 or "dismissed" for violating Rule 1.5. The Organization's position is based on the fact that Claimant admitted he smoked marijuana before being administered a urine test on July 12, 1999, and thus he was never formally charged with violating Rule 1.5 or the Carrier's Drug & Alcohol Policy.

The Carrier rejects the Organization's "technical defense," arguing that there was never any doubt that Claimant's conditional reinstatement was predicated on his pledge to remain drug-free and to adhere strictly to the Carrier's Drug & Alcohol Policy. Section XI, Part E of that Policy expressly prohibits a second positive test in a ten-year period.

### **Opinion**

The credible evidence in the Record clearly establishes that Claimant's positive drug test on December 17, 2001 was his second positive test within a ten-year period. He tested positive on July 12, 1999 during his physical examination and thus was in violation of Rule 1.5, which specifies, in part:

The use or possession of intoxicants, over-the-counter or prescription drugs, narcotics, controlled substances, or medication that may adversely affect safe performance is prohibited while on duty or on company property...Employees must not have any prohibited substances in their bodily fluids when reporting for duty, while on duty, or while on company property.

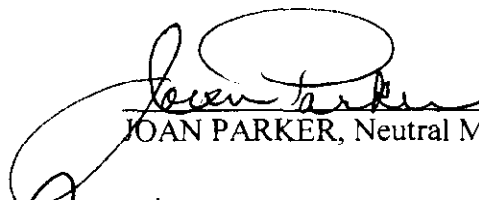
Claimant was offered a *one-time* chance to return to service, and he agreed to the waiver in order to go back to work. His Conditional Reinstatement Agreement clearly


put Claimant on notice that another positive drug test would trigger his dismissal. The Carrier acted in good faith in 1999, and Claimant cannot now plead ignorance so that he can get a second opportunity to enter the Employee Assistance Program.

This Board's review of the Awards introduced into evidence by the Carrier leads it to conclude that Union Pacific's "second time and you're out" policy is similar to that of other carriers and is widely recognized by arbitral panels as a reasonable exercise of the employer's obligation to provide a safe work environment. Moreover, these awards acknowledge that such policy comports with the rail industry's common carrier duty to provide the public with safe commercial operations.


Award

The claim is denied.

  
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JOAN PARKER, Neutral Member

  
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CARRIER MEMBER

DATED 7-16-03

  
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ORGANIZATION MEMBER

DATED 7-16-03