

PUBLIC LAW BOARD NO. 6621

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

UNION PACIFIC RAILROAD COMPANY

Case No. 20

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 Tractor-Bulldozer Operator P.C. Begay when it unjustly assessed his record with a Level 5 discipline and dismissed him from service on 10/03/02, as a consequence of investigation held on 09/05/02 for refusal to submit to a reasonable cause drug test.
- (2) Therefore, the Union Pacific Railroad Company:
 - (a) reinstate him to service with seniority rights unimpaired;
 - (b) all other contractual rights be restored;
 - (c) compensate him for net wage loss; and
 - (d) all charges be expunged from his record.

Facts

This case is related to Case No. 21. That matter concerns the dismissal of Claimant P.C. Begay for driving his backhoe recklessly and for engaging in hostile and intimidating conduct toward fellow employees. As a result of that incident, the Carrier instructed Claimant to take a drug test, based on reasonable cause. Claimant refused to submit to the drug test and walked off the job.

A Notice of Investigation was issued, and following a hearing on September 5, 2002, the Carrier issued Level 5 discipline and dismissed Claimant, effective October 3, 2002. The Organization challenged the dismissal, and failing to resolve the dispute with the

Carrier, submitted the claim to this Board for determination.

Findings

The Carrier's Drug and Alcohol Policy requires the administration of a reasonable cause drug test where:

An employee's acts or omissions result in the violation of any safety or operating rule which has the potential to (1) result in an accident and/or personal injury to self or others or (2) actually results in personal injury or significant property damage....
(Carrier's Ex. A-2)

The Carrier's Drug and Alcohol Policy further provides:

If the charges for refusing or tampering are upheld, the employee will be disqualified from service and dismissed. (Carrier's Ex. A-2)

In this case, there is no doubt that the Carrier's instruction to Claimant to take a drug test was based on reasonable cause. Claimant had operated his backhoe recklessly and had skidded to a halt within two to three feet of where three fellow employees were standing. After stopping the vehicle, he got out, and announced to two of them (Messrs. Estrada and Moran) to watch out because he was really aiming for the third, Ray Williams, to whom he angrily pointed.

Following an investigation at which Estrada, Moran and Williams testified, the Carrier dismissed Claimant. This Board reviewed the Record in that proceeding and upheld the dismissal. The credible evidence demonstrated that Claimant had driven the backhoe unsafely and had engaged in an act of hostility toward co-workers.

Given this background, the Carrier was within its rights in requiring Claimant to take a drug test. By walking off the job despite repeated warnings from Supervisor Teller as to the consequences of his insubordination, Claimant aggravated an already bad situation.

Although the Organization tried to suggest that Claimant could not take the drug test because he was unable to urinate, it offered no proof of this claim.

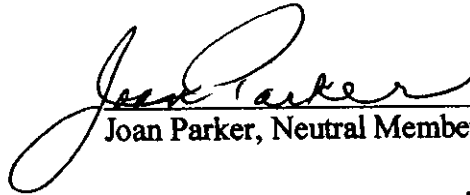
Likewise unpersuasive is the Organization's contention that the Carrier's failure to administer drug tests to the victims justifies a rescission of the discipline imposed on Claimant. While a local Carrier officer initially determined that both Claimant and Roy Williams should be drug tested, there is no evidence that reasonable cause existed to test the victim. Williams did not display reckless or careless conduct toward others; nor did he threaten Claimant with bodily harm.

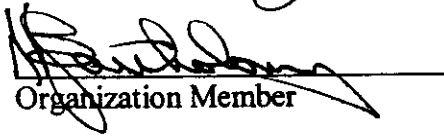
Arbitrators, as well as the courts, have long recognized the validity of reasonable cause drug testing. Particularly in situations where employees have been violent, or have threatened others with harm, an employer must be able to test for controlled substances. (See, for example, *BMWE v. Union Pacific*, Cases 849 and 840, SBA 279 (Dennis, 01/06/03), *BMWE v. Union Pacific*, Award 257, SBA 924 (Meyers, 07/26/02), *UTU v. Union Pacific*, Awards 118 and 119, PLB 5613 (Criswell, 03/24/00), *UTU v. Union Pacific*, Award 41, PLB 6053 (Zusman, 02/15/00), and *UTU v. Union Pacific*, Award 25, PLB 6099 (Quinn, 11/09/99)).

In the instant case, Claimant's behavior was intimidating and unprovoked. He acted deliberately and came very close to hurting his co-workers. There was no jocularly in his actions, which certainly gave management reasonable cause to order a drug test. Claimant's refusal to submit to the test was insubordinate and in violation of the Carrier's Drug and Alcohol Policy. Therefore, there was just cause to terminate Claimant's employment.

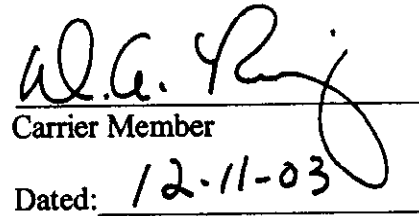
Award

The Claim is denied.


Joan Parker, Neutral Member


Organization Member

Dated: 12-11-03


Carrier Member

Dated: 12-11-03