

PUBLIC LAW BOARD NO. 6920

AWARD NO. 3

CASE NO. 3

Carrier File: M0404-5878

Organization's File: KCS.MS.SRC.
A052704.33.Liddell

PARTIES TO
THE DISPUTE:

Brotherhood of Maintenance
of Way Employees

vs.

Kansas City Southern Railway Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

STATEMENT OF CLAIM:

"We are hereby submitting APPEAL in accordance with RULE 34, of the current Work Agreement between the Kansas City Southern Railroad Company, former MidSouth Rail Corporation, former South Rail Corporation and its employees represented by the Brotherhood of Maintenance of Way Employees. This appeal is concerning Director Labor and Office Administration C. L. Wright's decision dated May 27 and received in this office on June 14, 2004. Mr. Wright dismissed employee A. D. Liddell for alleged violation of Rule 1.1, 1.3.1, 1st and 5th paragraphs of the Kansas City Southern General Code of Operating Rules and Rule 1.5 as revised by System Timetable No. 5, page 151."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was dismissed from the Carrier's service after a drug test administered in connection with a fitness for duty physical examination returned positive results for cocaine usage. At the time of the Carrier's disciplinary action, claimant had approximately 18 months of service.

Our review of the record does not reveal any procedural irregularities of significance. On the merits, proper compliance with the applicable urine sample collection and testing protocols was established by substantial evidence in the record. Claimant also acknowledged his usage of cocaine in the days before the test was administered.

The investigation also developed information about Carrier's voluntary referral policy. The policy permits employees to refer themselves to the EAP counselor without discipline under certain

circumstances. On this record, however, there is substantial evidence to establish that claimant was not eligible for handling under the policy.

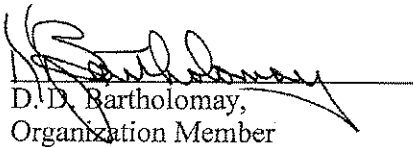
Although the record shows that claimant successfully completed rehabilitation after his dismissal and likely remains free of substance abuse, our role does not permit us to overturn discipline for leniency reasons. See, for examples, Award No. 6 of Public Law Board 6326 and Second Division Award No. 13761. The granting of leniency is the prerogative of the Carrier unless provided otherwise in the applicable Agreement. No such Agreement provision has been cited to us. Given these facts, our role is limited to reviewing the record to ascertain whether it contains substantial evidence in support of the Carrier's action. If it does, we have no choice but to uphold the Carrier's disciplinary decision.

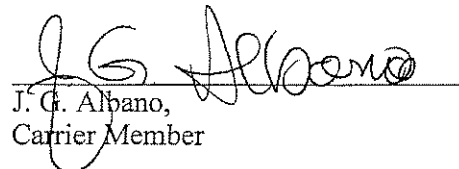
Under the circumstances, we must deny the claim.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


D. D. Bartholomay,
Organization Member


J. G. Albano,
Carrier Member

Date: 7-17-06