

PUBLIC LAW BOARD 2366

Award No. 94
Docket No. 110

Brotherhood of Maintenance of Way Employees

and

Illinois Central Gulf Railroad

STATEMENT OF CLAIM

Claim on behalf of H. J. Clay account he was dismissed for violation of Rule G, on September 30, 1995.

OPINION OF THE BOARD

The Claimant was notified of an investigation on a charge that he had used an intoxicant and marijuana prior to or while on duty. Subsequent to the investigation the Claimant was discharged.

The record shows that the Claimant's Foreman noted certain slurred speech and unsteady gait. As a result, a Supervisor was contacted. He also suspected that the Claimant was under the influence of a foreign substance. The Claimant was escorted to the chief medical officer and a blood and urine specimen were taken and sent to a lab. The blood test indicated such a high level of alcohol in the system that the test was repeated five times so as to insure the accuracy of the determination. In addition, the urine specimen showed that marijuana was in the system.

Based on the severity of the charges, as well as a past record which left much to be desired, the Carrier discharged the Employee from service. The Carrier requests that this Board not substitute its judgment for that of the Carrier, nor should we exercise the Company's prerogative of granting leniency.

The Organization questions the accuracy of the medical laboratory facilities testing since it questions the validity of a test result which indicated a .445 blood alcohol

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level, and it speculates as to various things that could produce the same result. Unfortunately, however, there is nothing of record presented to cast doubt upon the procedures utilized by the laboratory, and we have no alternative but to accept the blood alcohol report as shown in the record. Moreover, the Organization argues that the marijuana test performed can detect traces for several days after smoking a marijuana cigarette and thus it does not indicate that the person is under the influence at the time of the sample collection.

While the above may be true, that is a risk that an individual runs when he introduces an illegal and controlled substance into his system.

Even if we were to refuse to consider the blood alcohol test results, we still have the live testimony of individuals who observed the Claimant on the day in question. They testified to various physical manifestations indicating to them that the Employee was under the influence of intoxicants.

The record indicates that the Carrier considered the prior disciplinary record of this Claimant, not for the purpose of assessing guilt, but for the purpose of determining the quantum of punishment to be imposed.

We find no basis for setting aside the Carrier's determination in this case and we will deny the claim.

Findings

The Board, upon the consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

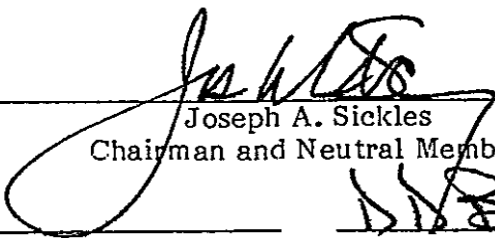
This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

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AWARD

Claim denied.



Joseph A. Sickles
Chairman and Neutral Member



J. S. Gibbins
Carrier Member



D. D. Bartholomay
Organization Member

October 1, 1986

Date