

Award No. 121
Case No. 121

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE: Southern Pacific Transportation Co. (Western Lines)

STATEMENT
OF CLAIM:

"1. That the Carrier violated the provisions of the current Agreement when, in a letter dated October 17, 1985, it dismissed Track Laborer K. K. Lunsford from its service on the basis of unproven charges, said action being excessive, unduly harsh and in abuse of discretion.

2. Carrier shall now exonerate Mr. Lunsford of all charges and reinstate him to his former position with the Carrier with seniority and all other rights restored unimpaired and compensated for all wage loss suffered."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

On September 19, 1985, while Claimant was working as a Track Laborer, he injured his back. He was taken to a medical center in Roseville, California and, in the course of an examination, a urine sample was taken for toxicology testing. This was in accordance with the newly established program, which Carrier had instituted, in which it had decided (and promulgated to all

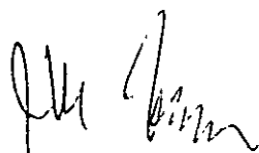
employees) that, in an effort to deal with drug and alcohol problems, all employees who either have physical signs of impairment, or had been involved in an incident or accident, were required to take a drug screening test. In this instance, the drug screening test indicated the presence of marijuana (cannabinoids). Subsequently, Claimant was cited for violation of Carrier's Rule G, which deals with alcohol and drug use, and a follow-up investigation was held on October 4, 1985. In the course of that hearing, Claimant indicated that he intended to participate in Carrier's Employee Assistance Program and had already contacted a Counsellor in that Program. The record indicates further that on October 7, 1985, in accordance with the Carrier's Employee Assistance Counsellor, Claimant entered the "starting point hospital" for drug rehabilitation. Some time between 24 and 48 hours after entering the hospital, Claimant signed himself out and nothing was heard from Claimant since that time by Carrier. Subsequently, by letter dated October 17, 1985, Claimant was advised that his violation of Rule G had been established and that he was dismissed from service.

The facts in this dispute are not in question. It is apparent from the record and Claimant's own testimony that he had been involved in the use of marijuana. His failure to participate effectively in the Employee Assistance Program, although committed to do so, was an indication of his attitude toward retention of his job, as the Carrier viewed it. The Board believes the Carrier

is correct in its assessment that Carrier is unable to retain in its service any employee who is involved in either drugs or alcohol in any form, particularly in view of its public obligations. In this instance, Carrier acted properly within the scope of its Collective Bargaining responsibilities and other responsibilities. There is no merit to the claim and it must be denied.

AWARD

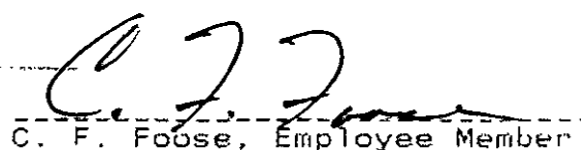
Claim denied.



I. M. Lieberman, Neutral-Chairman



R. J. Stuart, Carrier Member



C. F. Foote, Employee Member

San Francisco, California
September 5, 1988