

PUBLIC LAW BOARD NO. 2439

Award No. 152
Case No. 152

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western Lines)

STATEMENT
OF CLAIM:

"That the Carrier violated the Current Agreement when it dismissed Mr. M. A. Luperlo from its service, said action being excessive, unduly harsh and an abuse of discretion.

"That the Carrier reinstate Carrier to his former Carrier position with seniority and all other rights restored unimpaired, with pay for all loss of earnings suffered, and his record cleared of all charges."

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.

Claimant herein had been employed by Carrier as a Laborer on January 26, 1984. On March 20, 1986 after being on furlough Claimant was recalled to service and directed to take a return-to-duty physical examination. The results of that examination indicated that he tested positive for the presence of marijuana and cocaine. As a result of that physical examination test Claimant was advised by letter dated June 16, 1986 that he was dismissed from Carrier service. Subsequently Claimant entered Carrier's Employee Assistance Program and upon completion of that Program it was agreed based upon the Counsellor's advice and recommendation that Claimant be reinstated to service on a conditional basis. Those conditions included the fact that Claimant would be on probation for at least two years and any evidence showing that he had deviated from complete abstinence from alcohol and other drugs would result in automatic removal from service and return to a dismissed status. That agreement also provided that he would submit to random, unannounced alcohol and/or drug tests during the probationary period.

Following the agreement that Claimant be returned to service he was given certain random drug and alcohol tests. His June 11, 1987 test indicated the presence of alcohol. Thereafter by letter dated June 17, 1987 he was advised that he was returned to a dismissed status by virtue of failure to abide by his conditional reinstatement agreement.

Petitioner argues that he was returned to a dismissed status without benefit of a hearing and thus Carrier violated the rules. Carrier disagrees in that he was dismissed for good cause and no hearing was required under the circumstances of the conditional probationary period. Carrier also notes that the presence of alcohol in Claimant's system as indicated by the test was not only a violation of his agreement for reinstatement but also a violation of Carrier's Rule G. Further the test results were confirmed by two technically different types of tests. Carrier also notes that during the twelve-month period since Claimant's dismissal he has not contacted the Employee Assistance Counsellor which is a common practice in similar cases.

The Board cannot agree with Petitioner's argument with respect to a hearing. No hearing was required in view of the conditional probationary agreement signed by Claimant. He was simply returned to a dismissed status by virtue of his failure to live up to his agreement with Carrier. Carrier was within its rights in dismissing him under the circumstances and the discipline may not be disturbed.

AWARD

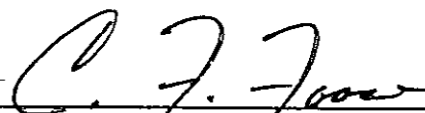
Claim denied.



I. M. Lieberman, Neutral-Chairman



for R. J. Stuart--Carrier Member



C. F. Foose--Employee Member

San Francisco, California
August 31, 1989