

PUBLIC LAW BOARD NUMBER 3445

Award Number: 42

Case Number: 42

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Bridgetender, J. J. Love, Rt. 1, Box 24-B, Salipta, AL 36570, was dismissed from service on June 20, 1986 for alleged failure to comply with instructions of Carrier's Medical Director and company policy to keep his system free of prohibited drugs. Claim was filed by the Employees in accordance with Railway Labor Act and agreement provisions. Employees request he be reinstated with back pay for all lost time and all rights unimpaired.

FINDINGS

Claimant's seniority with Carrier was established on April 12, 1973, and he was promoted to Bridgetender on March 8, 1982. At the time of his dismissal, Claimant was assigned to Jackson, Alabama.

By letter dated June 6, 1986, Claimant was charged with failure to comply with the instructions of Carrier's medical director and Carrier's policy, as stated in an October 3, 1985 letter of instruction, to give urine samples in order to demonstrate that he was not using marijuana or other prohibited drugs. Formal investigation was held on June 12, 1986. By letter dated June 20, 1986, Claimant was advised that his violation had been established and he was dismissed.

The issue to be resolved in this dispute is whether Claimant was dismissed for just cause and if not, what should the remedy be.

In May 1985, as a condition of restoration to service following a prior dismissal, Claimant provided a urine sample which tested positive for marijuana. Following a subsequent negative test, Claimant was returned to service, but a letter dated October 3, 1985 instructed Claimant to keep free of prohibited drugs and advised him that he would be subject to periodic urinalysis for the next three years. Moreover, he was advised that should he test positive for drugs, he would be subject to dismissal. Pursuant to the annual physical examination for Bridgetenders, Claimant gave a urine sample on May 23, 1986--Claimant had failed to report on the original scheduled date, May 16, 1986. Both the EMIT test and a confirming GC/MS test showed positive results for THC (marijuana). On the basis of this positive result, that is, Claimant's failure to comply with his October 3, 1985 instructions to demonstrate that he was drug free, Claimant was dismissed.

The position of the Organization is that Claimant was dismissed without just cause because the May 23 urinalysis was ordered without any probable cause. For instance, the Organization argues, Claimant did not demonstrate an inability to perform his job and, therefore, no test should have been ordered.

The position of the Carrier is that Claimant was dismissed for just cause because the positive urinalysis results show that he violated his

October 3, 1985 instructions to remain drug free. The Carrier further argues that the tests were reliable, confirming and that there was no likelihood of passive exposure to marijuana causing Claimant's positive test results.

After review of the entire record, the Board finds that Claimant was dismissed for just cause and that the claim must be denied.

The Carrier has established through substantial, credible evidence that Claimant tested positive for THC (marijuana) in his May 23 urinalysis. This positive test clearly violates the instructions given to Claimant by letter of October 3, 1985. Claimant knew by the explicit language of the letter that failure "to demonstrate that [he was] no longer using marijuana or other prohibited drugs would subject him to dismissal. It was violation of the instructions in the letter and not other rules or directives which is the critical inquiry in this case. Thus, the violation was clearly shown. The accuracy and proper identification of the drug tests have not been credibly challenged by the Organization and appear reasonable in the record.

Questions have been raised in this proceeding regarding the appropriateness of the Carrier's drug policy and testing practices. The Board recognizes that prohibited drugs are not only illegal but generally impair judgment and coordination. The Carrier's concern that its employees be drug free is reasonable, proper and consistent with good labor relations policy. The periodic testing for drug use helps to ensure the health and

safety of employees and the public at large. The Carrier has a legitimate interest in maintaining its sound policy against drug use.

AWARD

Claim denied.

Nicholas Rumes
Neutral Member

J. M. Miller
Carrier Member

Royce L. Hall
Organization Member

DATE:

May 31, 1988