

PUBLIC LAW BOARD NO. 3445

Award Number: 52

Case Number: 52

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, Larry Darrisaw, 2401 Nottingham Way, Apt. 153, Albany, GA 31707, was dismissed from service on August 16, 1987 for alleged positive results for marijuana. Claim was filed in accordance with Railway Labor Act and agreement provisions. Employees request he be reinstated with pay for all lost time with vacation and seniority rights unimpaired.

FINDINGS

Claimant entered the Carrier's service on November 5, 1974.

Claimant requested a return-to-work physical examination on June 15, 1987 after having been off for an extended period of time. The examination was conducted on June 25, 1987 and included a drug screen urinalysis. Claimant tested positive for cocaine. By letter dated July 1, 1987, the Carrier's Medical Director, Dr. J. P. Salb, instructed Claimant to rid his system of prohibited drugs and to submit a negative urine sample within 45 days. The letter warned Claimant that failure to do so might subject him to

dismissal and reminded Claimant of the Carrier's policy against drug use. Claimant was also offered the option of participation in the Carrier's Drug Alcohol Rehabilitation Services ("DARS") program. Claimant did not submit a negative urine sample within 45 days. He sought to schedule a urinalysis three days after the expiration of the 45 days.

By letter dated September 21, 1987, Claimant was directed to attend a formal investigation on charges that he failed to comply with Dr. Salb's instructions and the Carrier's policy regarding drug use. After a series of postponements, the investigation was conducted on October 16, 1987. By letter dated October 22, 1987, Claimant was dismissed based on the evidence adduced at the investigation.

Claimant testified at the investigation that he thought Dr. Salb's letter gave him 45 days off, which he interpreted as working days, not calendar days. Claimant also testified that he did not understand the letter but was embarrassed to ask anyone what it meant because he did not want anyone to know that he was in this sort of difficulty.

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

The position of the Organization is that Claimant was dismissed without just cause because Claimant could not understand the instructions in Dr. Salb's letter. The Organization asserts that Claimant was confused and is

willing to enter the DARS program.

The position of the Carrier is that Claimant was properly dismissed for failure to comply with its drug policy and Dr. Salb's instructions. The Carrier contends that the evidence adduced at the investigation clearly shows that Claimant was instructed to submit a negative urine sample within 45 days but did not do so. Further, the Carrier contends that Claimant's explanation that he misunderstood the time limit to be 45 working days is without merit because Claimant testified that the cutoff date would be August 24, when in fact, it would have been September 2 if working days were counted.

After review of the entire record, the Board finds that Claimant was dismissed for just cause under the Agreement.

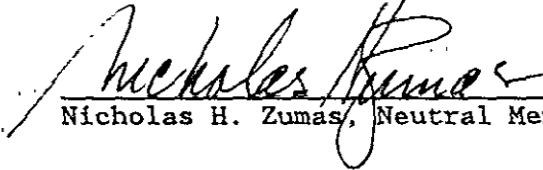
The Carrier has established by substantive credible evidence in the record that Claimant did not comply with its policy on drug use or Dr. Salb's letter of instruction. Claimant used drugs initially, in violation of the Carrier's reasonable drug policy. Claimant was instructed to submit a negative urine sample but failed to do so. While the Organization's argument is compelling that Claimant was not able to understand Dr. Salb's letter and was too embarrassed to seek assistance in so doing, it does not excuse his failure to ensure that he fully understood the instructions given to him. Moreover, Claimant's explanation that he thought he had 45 working days in which to submit a negative sample is not supported by his statement that he thought the cutoff date was August 24.


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The discipline imposed is neither arbitrary, capricious nor discriminatory in light of the serious nature of Claimant's offense. Drug use not only injures the user, but places his co-workers and the public at risk. The Carrier had a clear and reasonable policy which Claimant violated.

AWARD

Claim denied.

  
Nicholas H. Zumas, Neutral Member

  
Carrier Member

  
Organization Member

Date: JUNE 12, 1989