

Case No. 314 Award No. 314

STATEMENT OF CLAIM:

The record shows that the Claimant failed to provide a negative urine sample from an approved service facility. He mainly contends that it was his understanding that he had to wait the full forty-five (45) days before he could submit his next urine sample.

These are difficult cases for all concerned, particularly for the Organization. It has forcefully and with skill advanced its many concerns with respect to the application of the Carrier's Drug Policy. In this case, the Carrier introduced the results of the Claimant's urinalysis test, however, the medical experts responsible for the test were not present at the hearing to be challenged by the Organization. Under certain circumstances, the Organization arguments could lead to a sustainable claim. However, we have a testing process here that includes the use of a highly reputable laboratory and withstands vigorous scrutiny. Accordingly, because the key data, in this case the results of the urine test, came about from this process, it can be reasonably judged to be a medical fact. Therefore, the unavailability of a Carrier medical person for cross-examination with respect to the established medical fact does not make the hearing an unfair one. The Board has carefully considered these contentions. We understand the points raised by the Organization and we do recognize that they are not without merit in certain situations. In this case, we conclude that the claim must be denied.

Railroad work is dangerous. The safety of the Carrier's workforce, as well as the public, requires positive measures to ensure that the inherent dangers are minimized. In furtherance of these efforts, the Carrier initiated a drug testing program which it announced to each of its employees, as noted earlier. The substance of the Carrier's program as well as ones like it used by other Carriers, has been upheld by numerous arbitral Awards. Given the established facts of this case, we have no basis to arrive at an Award that runs counter to these many Awards. In the instant case, the Claimant was put on notice and, in effect, he was provided another opportunity to retain his employment.

The Board does not lightly sustain the dismissal of an employee with the years of service that we find here. Moreover, it appears that prior to the incident giving rise to this claim, the Claimant had a spotless discipline record. Nonetheless, under the constraints that this Board must function, we cannot sustain the claim.

AWARD

The claim is denied.

F. J. Domzalski
Carrier Member

Eckehard Muessig
Neutral Member

J. P. Cassese
Employee Member

Dated: Jan. 8, 1990