PUBLIC LAW BOARD NO. 3514

Case No. 320 Award No. 320

PARTIES to DISPUTE: Brotherhood of Maintenance of Way Employes
-and-
Consolidated Rail Corporation

STATEMENT OF CLAIM:

Appeal of Welder Melvin Woodyard to be returned to the service with all back pay and benefits restored.

FINDINGS: The central issues in this case are concerned with the applications of the Carrier's Drug Testing Policy. On February 20, 1987 the Carrier's Chairman and Chief Executive Officer sent a letter to each employee in which he explained the Carrier's concern for safety and how the use of illegal drugs by employees impaired its operations and, threatened the safety of the public. A summary of its Drug Policy was attached to each of these letters.

A key feature of the Drug Policy provides the employee with an option for an evaluation by the Carrier's Employee Counseling Service. If this evaluation shows that the employee does not have an addiction problem, the employee must provide a negative drug test within forty-five (45) days. In those cases where the evaluation indicates an addiction problem and the employee enters an approved treatment program, he may be returned to service upon appropriate recommendation and he must provide a negative test within 125 days of the date of the initial positive test.

The Claimant, because he had tested positive at an earlier time for cocaine, elected to give another urine specimen within forty-five (45) days. Because that specimen tested negative, he was returned to the service. However, pursuant to the Carrier's Drug Policy, he was subject to testing for three years. On July 2, 1987, he tested positive for cannabinoid and, subsequent to an investigation, he was dismissed from the service.

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 respect, it has raised questions and objections about the

Carrier's testing procedures as well as the Carrier's failure to produce medical personnel at the hearing held on this matter who could speak authoritatively about the validity of the urine test and be cross examined so that relevant information could be elicited.

The Board has carefully considered these contentions. We understand the points raised by the Organization and do recognize that they are not without merit in certain situations. However, the record here shows that the Carrier employed a highly reputable testing facility, which used the latest techniques and procedures to assure the accuracy of its test. Therefore, it is established that the test result is a "medical fact" as distinguished from a "medical opinion". Accordingly, the failure to have a medical person present at the hearing for cross-examination does not fatally flaw the fairness of the proceedings.

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 the 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 consequences of his failure to comply with the Carrier's direction were of his choice.

AWARD

The claim is denied.

F. J. Domzalski
Carrier Member

Eckehard Muessig
Neutral Member

J. P. Cassese
Employee Member

Dated: 6-4-90