

PUBLIC LAW BOARD NO. 3514

Case No. 357      Award No. 357

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

STATEMENT OF CLAIM:

Appeal of Machine Operator, Jeffrey M. Miller, to have his discipline of dismissal set aside.

FINDINGS: The evidence shows that the Claimant failed to demonstrate that he no longer uses prohibited drugs.


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 about and objections to 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.

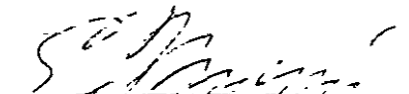
The Board has carefully considered these contentions. We understand the points raised by the Organization and do recognize that they are not without merit in certain situations. However, the record here shows that the Carrier employed a highly reputable testing facility, which used the latest techniques and procedures to assure the accuracy of its tests. 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 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 consequences of his failure to comply with the Carrier's direction were of his choice.

AWARD

The claim is denied.

  
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F. J. Domzalski  
Carrier Member

  
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Eckehard Muessig  
Neutral Member

  
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J. P. Cassese  
Employee Member

Dated: 6-4-90