

AWARD NO. 21  
CASE NO. 21

PUBLIC LAW BOARD NO. 3558

PARTIES ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
TO )  
DISPUTE ) SOUTHERN PACIFIC TRANSPORTATION CO. (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of Houston Division B&B Carpenter Ronnie Joe for pay for time lost commencing September 24, 1984 and on a continuing basis, with all seniority, vacation and other benefits due him restored intact and with the dismissal charge of alleged violation of Company Rule 'G' removed from his personal record, due to his unjust dismissal." (MW-84-126)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Claimant was dismissed from the service of the Carrier on the basis of it having been determined at a company hearing that he was guilty of a charge of "being under the influence of and/or the use of illicit drugs while on duty at Urbana, Texas as a B&B Carpenter, Gang #5, on August 28, 1984." His actions were found to be in violation of Rule "G", which reads in part as follows:

"RULE G: [E]mployees shall not report for duty under the influence of, or use while on duty or on company property any drug, medication or other substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety...the illegal use, possession or sale while on duty of a drug, narcotic or other substance which affects alertness, coordination, reaction, response or safety, is prohibited."

While there is no doubt that Claimant was not technically working on the date of charge, the fact remains that Claimant had reported to a company doctor on the date in question in connection with an on the job injury that had occurred on August 27, 1984, and it was determined from a drug screen taken at a clinic that Claimant tested positive for marijuana and benzodiazepine. Accordingly, we believe it may be held that Claimant was technically in violation of Rule "G" on the date in question.

In reviewing the record, we note that Carrier had offered Claimant "a conditional reinstatement" provided he was willing to participate in and successfully complete a rehabilitation program. This offer was extended by letter dated September 21, 1984, and Claimant was directed to make an appointment with the Carrier's Employee Assistance Counselor. Claimant did report to the Counselor on September 27, 1984 and was sent to the Alternative Drug Abuse Program for treatment and rehabilitation. However, Claimant apparently elected not to participate in the program, for the record shows that under date of February 11, 1985, the Employee Assistance Counselor, Dr. John Klein, wrote Carrier as follows:

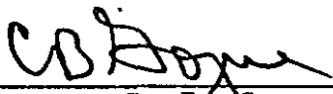
"I have not heard from Ronnie Joe since the above date [September 27, 1984]. The Alternative Drug Abuse Program has no record of him applying for services."


Considering all the facts of record, this Board finds no reason to hold that dismissal of Claimant from all service was an abuse of Carrier's discretion. The claim for reinstatement to service will be denied.

AWARD:

Claim denied.

  
Robert E. Peterson, Chairman  
and Neutral Member

  
C. B. Coyne  
Carrier Member

  
M. A. Christie  
Organization Member

Houston, TX  
February 4, 1986