

PUBLIC LAW BOARD NO. 3765

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES

vs.

GRAND TRUNK WESTERN RAILROAD
COMPANY

Case No. 46

STATEMENT OF CLAIM

Appeal the decision rendered in the case of Mr. Terry Tucker, Trackman, who was issued discipline in the form of dismissal as a regular of an investigation held June 11, 1990 at Pontiac, Michigan.

Request Mr. Tucker be returned to service and be paid for time lost on passing a return to work physical examination.

OPINION OF THE BOARD

Claimant Terry Tucker was employed by Carrier on May 1, 1989, as a Trackman. On August 15, 1989, he sustained an on-duty injury. Before he had an opportunity to return to work from the injury, he was furloughed. In March 1990, Claimant was recalled to work. He was subjected to a return-to-duty physical examination, as required. Part of that examination is a urine test for drugs. Claimant tested

positive for cocaine. He was notified by the Medical Department of his positive drug test and was directed to enroll in the EAP Program or to supply a negative urine sample within 45 days. He was informed that if he did not, further action, including dismissal, was possible. Claimant did not enroll in the EAP Program or meet the 45-day deadline to submit a negative sample. The Chief Engineer was so notified. Claimant was thereafter notified by Carrier to appear for an investigation into the matter. The letter informing Claimant of the investigation reads in pertinent part as follows:

1. Your alleged failure to comply with directions from the Carrier's Chief Medical Officer, V.J. Gallant, dated March 30, 1990, which directed you to provide a negative drug screen within 45 days of that letter to enroll in and successfully complete a rehabilitation program under the supervision of the Manager EAP.
2. Being absent from duty without proper authority beginning May 15, 1990.

The investigation was held as scheduled on June 11, 1990. Claimant was properly notified of the hearing, but he failed to appear. Over the objection of the Union Representative, Carrier held the investigation without Claimant being present.

As a result of the investigation, Claimant was found guilty as charged and was dismissed from service.

This Board has reviewed the total record of this case. This review persuades the Board that Claimant was guilty as charged. Despite his failure to appear at the hearing, his case received a fair evaluation. He had a chance to help himself to keep his job, but for some reason chose not to do so. He neglected to act at his own peril.

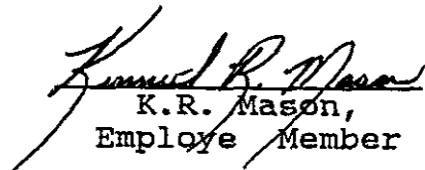
AWARD

The claim is denied.



R.E. Dennis,
Neutral Member

J.A. DeRoche,
Carrier Member



K.R. Mason,
Employee Member

Date of Adoption