

PUBLIC LAW BOARD NO. 3765

Parties
to the
Dispute

:
: CONSOLIDATED RAIL SYSTEM FEDERATION :
: BROTHERHOOD OF MAINTENANCE :
: OF WAY EMPLOYEES :
:
: vs. :
:
: GRAND TRUNK WESTERN :
: RAILROAD COMPANY :
:
:
:

Case No. 54

STATEMENT OF CLAIM

We wish to appeal the decision rendered in the case of Mr. Richard E. Kennedy - Trackman, who was issued discipline in the form of dismissal from service as a result of an investigation held August 7, 1991 at Pontiac, Michigan.

Inasmuch as there is a conflict between the Carrier's test results of July 3, 1991 and Preferred Clinics results of test made June 27, 1991, we request Mr. Kennedy be returned to work and be paid for all time lost.

OPINION OF THE BOARD

Claimant R.E. Kennedy, Jr., was a furloughed Trackman. He was notified by Carrier that he should report for a return-to-work physical on June 12, 1991. As part of that

return-to-work examination, a urine specimen was obtained and tested for drugs. Claimant tested positive for cocaine.

On June 20, 1991, Claimant was notified that he had tested positive for a controlled substance and that he had until 4:00 P.M. on July 30, 1991 in which to either enroll in the Company's Employee Assistance Program (EAP) or provide a negative drug screen report and present himself for retesting. This notification is referred to as the 45-day letter.

On June 27, 1991, Claimant was tested at an independent laboratory at his own expense. He provided a copy of a negative test result to Carrier's Medical Department on July 3, 1991. Claimant was retested by Carrier's Medical Department on the same day. He again tested positive.

Carrier's Medical Department notified the Chief Engineer that Claimant had tested positive on two tests and he had failed to contact and enroll in the EAP/REHAP program. Carrier officials, by letter dated August 1, 1991, notified Claimant to appear at a formal investigation on August 7, 1991 to investigate the following charges:

This formal investigation is to determine your responsibility, if any, for allegedly failing to comply with directions from the Carrier's Chief Medical Officer Gallant, dated June 20, 1991 to, within 45 days, provide medical documentation from your personal physician of your fitness to return to duty or to enroll in and successfully complete a rehabilitation program under the supervision of the Manager EAP.

As a result of the investigation into the matter, Claimant was found guilty and dismissed from Carrier's service.

This Board has reviewed the transcript of the hearing, the 45-day letter, and the parties submissions in the case. As a result of that review the Board concludes that Claimant received a full and fair hearing and that he was granted every reasonable opportunity to meet Carrier's requirements that he return to work drug free. Claimant, for whatever reason, failed to enroll in the EAP program. By enrolling in the program, he could have met Carrier requirement for return to work and, in the process, done himself some personal good. His failure to help himself cannot be condoned by this Board. Claimant tested positive for cocaine twice.

Carrier is not obligated to do more than it has in this instance.

AWARD

The claim is denied.

R.E. Dennis
R.E. Dennis, Neutral Member

K.R. Mason
K.R. Mason, Employee Member

R.J. O'Brien
R.J. O'Brien, Carrier Member

January 6, 1994
Date of approval