

PUBLIC LAW BOARD NO. 3765

Parties
to the
Dispute

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

Case No. 56

STATEMENT OF CLAIM

We wish to appeal the decision rendered in the case of Mr. John N. Pruitt, Jr., Trackman who was issued discipline in the form of dismissal from service as a result of an investigation held October 25, 1991 at Pontiac, Michigan.

We request Mr. Pruitt be returned to service and be paid for all monies and benefits lost due to the Carrier's actions as Mr. Pruitt was innocent.

OPINION OF THE BOARD

Claimant John N. Pruitt was a furloughed Trackman. He was recalled to service and instructed to report on August 13, 1991, to Carrier's Medical Examiner for a return-to-work examination. Part of that return-to-work examination is a drug screen. Claimant was informed on August 16, 1991, that

he tested positive for cocaine and he would not be allowed to return to work until he produced a negative drug screen report. The letter informing Claimant of the results of his return-to-work physical examination and the conditions under which he could return to work are duplicated below. This letter is commonly referred to as a "forty-five day letter."

August 16, 1991

Dear Mr. Pruitt:

The results of your return to work physical examination revealed a positive detection of a controlled substance. for this reason, you are medically disqualified from further work.

Please be advised that you have until 4 P.M. on September 30, 1991 to act in accordance with one of the two options below:

1. produce a negative general drug screen report (to include a test for THC) obtained at your expense from the physician of your choice and subsequently test negative on a test administered by the GT Medical Department. You must furnish the original of the drug screen report and present yourself for testing at the Medical Department before 4 P.M.

OR

2. enroll in, and successfully complete, a rehabilitation program approved by the GT Manager, Employee Assistance and Rehabilitation. He may be contacted at (313) 396-6654. Your enrollment must be verified in writing and received by the Manager, EAP/REHAB before 4 P.M. You must test negative on a general

drug screen at the time of your re-examination following completion of treatment.

Failure to comply with this instruction within this period as stated above, will result in further administrative action which may include dismissal.

This is your last chance. If you test positive for any illegal drugs on any further test, you will be subject to disciplinary action up to and including dismissal. Failure to report for a scheduled appointment will also be grounds for discipline.

Yours truly,

V.J. Gallant, M.D.
Chief Medical Officer

cc: Personnel Department
cc: Mgr. EAP/REHAB

This letter was sent certified and was accepted at Claimant's address on August 20, 1991.

Claimant did not enroll in the EAP program nor did he provide a negative drug screen within the forty-five day period. Claimant was thereafter charged as follows:

Your alleged failure to comply with directions from the Carrier's Chief Medical Officer Gallant dated August 16, 1991, to, within 45 days, provide medical documentation from your personal physician of your fitness to return to duty and to subsequently test negative on a test administered by the GTW Medical Department or to enroll in and successfully complete a rehabilitation program under the supervision of the Manager, EAP/REHAB and to test negative on a test administered by

the GTW Medical Department at the time
of your re-examination by the Chief
Medical Officer.

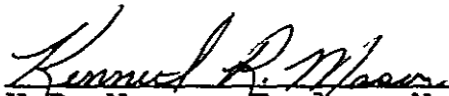
A hearing into the matter was held on October 25, 1991, as scheduled. As a result of the hearing, Claimant was found guilty as charged and dismissed from Carrier's service. The transcript of the hearing was made a part of the record. A review of that record reveals that Claimant was properly represented at the investigation and was afforded a full and fair hearing. It also reveals that Claimant did not produce the required test results within the 45-day period and that he had received two 45-day letters in less than one year.

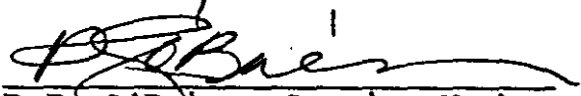
This Board has consistently taken the position that employees are required to remain drug free while employed by this Carrier. We think that is an appropriate position and can find no basis to decide otherwise in this instance.

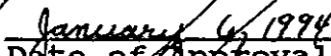
AWARD

The claim is denied.


R.E. Dennis, Neutral Member


K.R. Mason, Employee Member


R.J. O'Brien, Carrier Member


Date of Approval