

PUBLIC LAW BOARD NO. 4492

Case No. 1
Award No. 1

Parties to Dispute:

United Transportation Union (T-C)

vs

Central of Georgia Railroad Company

Statement of Claim:

Claim of Georgia Northern employee O. Bowens, Jr. for reinstatement with seniority unimpaired, for the 1987 monetary equivalent of productivity shares lost, pay for all time lost, including vacation privileges; holiday privileges; health and welfare privileges and all other rights lost as result of being dismissed in letter dated July 21, 1987.

Opinion of Board:

Briefly summarized, our study of the facts disclose that on June 19, 1987, Claimant was observed by two Carrier Officials performing work in violation of Safety Rules, and when confronted with the nystagmus gaze test, gave evidence of being under the influence. Claimant was then requested to take a urinalysis test under the "reasonable cause" theory and that test came back positive. At the same time he was afforded the opportunity to take a blood test which he declined. Claimant was apprised of the results and notified to attend a formal investigation on a charge of violating Rule "G". Following the investigation, Claimant was dismissed from the service. The claim was appealed in the usual manner on the property without being resolved and is now before the Board for final adjudication. The Claimant was advised of these proceedings and made a personal appearance in support of the Organization's position.

The Organization does not challenge the results of the Drug Screen test. The fact that the test conclusions, if sustained, would justify the imposition of dismissal under the Carrier rules would appear to be axiomatic. The crux of the Claimant's position herein forcefully presented by the Organization, is that the results of the nystagmus gaze test and the Drug Screen test were caused by "passive inhalation"; consequently Claimant should not be found guilty of the charge.

This problem has been addressed by various experts in the Drug Testing field and their conclusions were proffered by Carrier to refute the notion that "passive inhalation" is a viable defense for a Rule G violation. Moreover, Carrier stresses that Rule "G" not only prohibits use and possession but also "being under the influence". Finally, we note the same argument dealing with "passive inhalation" was presented and rejected in Award No. 108, Public Law Board 3372.

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Furthermore, even assuming arguendo, that "passive inhalation" were a defense under some circumstances, we are not convinced that Claimant submitted credible facts establishing that position. Based on our careful analysis of the record submitted, we have no reasonable grounds for overturning Carrier's decision in this case.

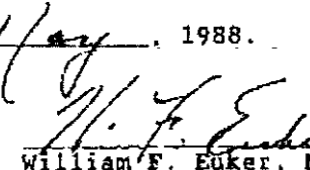
Findings:

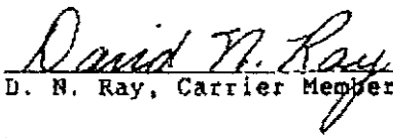
The agreement was not violated.

Award:

Claim denied.

Dated this 16th day of July, 1988.


William F. Euker, Neutral Member


D. N. Ray, Carrier Member


J. M. Hicks, Organization Member

Carrier File: T-27817
Org. File: GA.N.-164