

PUBLIC LAW BOARD NO. 4492

Case No. 13
Award No. 11

Parties to Dispute:

United Transportation Union (T-C)

and

Georgia Northern Railway Company

Statement of Claim:

Claim of Georgia Northern employee J. A. Rizer for reinstatement with seniority unimpaired, for the 1988 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 September 23, 1988.

Opinion of Board:

On June 28, 1988, Claimant was working as Extra Switchman when Train No. CF-22, which he was assigned to handle, derailed on the lower ladder of Albany Yard. The Carrier's preliminary evaluation was the derailment was caused by a rules violation, which in turn triggered a drug testing examination in the enforcement of the Federal Railroad Administration's promulgated rules, Subpart D, subparagraph (2) Accident- Incident. The Claimant's test for blood and urine showed positive for THC-marijuana in the system, which is a prohibited substance under Carrier's Rule "G". The blood test results showed 7 nanograms per milliliter (ng-ml) of blood and the urinalysis results disclosed positive, with 75 nanograms per milliliter.

In a letter dated July 29, 1988, Claimant was notified to attend an investigation on September 15, 1988, in which he was charged with violation of Carrier's Rule "G" coupled with a failure to comply with Medical Director's instructions of December 4, 1985, to keep his system free of prohibitive drugs. The letter of December 4, 1985, addressed a previous incident wherein Claimant was tested positive and was later admitted to the DARS program (Drug and Alcohol Rehabilitative Service). Following a formal investigation in the present case, the Claimant was advised, based on the evidence adduced, that he was dismissed from the service. The claim was appealed in the usual manner on the property, in the course of which the Organization intimated the Claimant's condition probably was caused by "passive inhalation". The claim is now presented for our decision and the Claimant was notified of the Board's proceedings in the usual and customary manner by his Organization.

This Board has had occasion to consider the principle defense proffered by the Organization concerning "passive inhalation", in our earlier Awards 1 and 2 of this Board and Award 108, Public Law Board 3372. We incorporate those conclusions, by reference, in the present case.

As noted earlier, the Claimant had previously been tested positive and was afforded the opportunity to join the DARS program. At that time, he was warned of the possibility of dismissal for failure "to keep your system free of prohibited drugs". In Award No. 2, Public Law Board 4480, the facts were very similar and there it was held:

Unfortunately there comes a point when the corrective factors alone will not successfully deter the use of the prohibited drug and the Carrier's only recourse is to implement the policy through the disciplinary procedures. The Claimant was reminded of this possibility in clear and explicit language in Dr. Salb's letter a year earlier. If Claimant was sincere about handling his drug problem independent of the DARS program, which was his election, he had a full year to demonstrate that conviction.

In our opinion, Claimant has been given full opportunity to change his behavioral pattern, without success; consequently, we find no basis for reversing the discipline in this case.

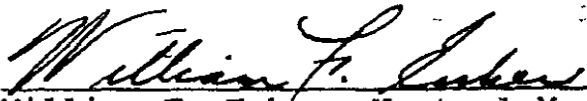
Findings:

The agreement was not violated.

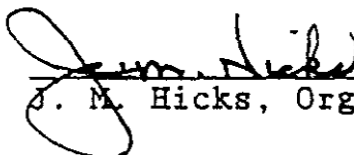
Award:

Claim denied.

Dated at Norfolk, VA, this 5th day of Sep t., 1989:


William F. Euker, Neutral Member


K. J. O'Brien, Carrier Member


J. M. Hicks, Organization Member