Award No. 45
Case No. 45
Org.'s File: R-94-90
Carrier's File: 9500357

PUBLIC LAW BOARD NO. 4561

Parties: United Transportation Union
and
Union Pacific Railroad Company

Statement of Claims:

Claims of Yard Foreman R.G. Meyer and Yardman J.L. Pasco for reinstatement to service and pay for all time lost and all entries of the discipline removed from their personal records.

Background:

This dispute is one of first impression and primarily devolves upon the proper application and administration of a revised regulation of the Federal Railroad Administration and Carrier's Rules which became effective on August 15, 1994 dealing with random Drug and Alcohol Testing. The principal change in the regulations and rules was that the donor or employee being tested had to produce a urine specimen within two rather than the former eight hour test period.

The incident precipitating the dispute occurred on September 7, 1994 when the Claimant Yard Crew, together with Engineer Henderson, were instructed at the end of their tour of duty, to report to the Manager's Office in the Portland Terminal for a random drug and alcohol test pursuant to the regulations of FRA and Carrier's rules.

The Claimants did not produce the requisite urine sample and were taken out of service on the same day. An investigation was

convened on September 19-20, 1994 and the Claimants dismissed on October 4, 1994 as having been found guilty of violating the relevant rules and regulations.

The gravamen of this dispute centers around the activities pertaining to the production or non production of the urine samples on September 7. These controverted activities will be discussed in detail in the body of this Award.

At the completion of their 11:59 PM shift (September 6), the Claimants were instructed by Manager Aguas that they had been randomly selected to undergo an alcohol and drug test in accordance with the FRA Regulations and the Carrier's Rules. Manager Aguas transported the Claimants to the conference room of the office of Mr. Laughlin, Manager of the Portland Terminal Operations. Mr. Aguas stated he delivered the crew to the Conference Room between 5:30 and 6:00 AM (Tr I-222).

The FRA Regulations in issue, 49 Part 40.25 states in part:

> ". . . If that individual is unable to provide such a quantity of urine, the collection site person shall instruct the individual to drink not more than 24 ounces of fluids, and, after a period of up to two hours again attempt to provide a complete sample using a fresh collection container. . . If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued and the employer notified. The MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to test."

The Carrier's February 12, 1993 Policy stated in Part III, Section B, on random Drug Testing that it would test in compliance with FRA's requirements. It states that the drug testing was to deter violations of Rule G. When the FRA amended its Regulations, the Carrier issued instructions that it was its policy to follow the provisions of 49 CRF 40.25 regarding the collection of urine samples. The Company printed its Instructions in a pamphlet (Ex K).

On the given morning when Manager Aguas transported the crew to the Conference Room, Ms. Cindy Gross was already there. Ms. Gross was there as the Collector, an employee of the Ameritest Company, an independent contractor, hired by the Carrier to administer the random drug and alcohol tests. Ms. Gross was not a employee of the Carrier.

Ms. Gross testified this test had been scheduled for 5:30 AM, but the crew did not arrive at the Conference Room until 5:45 AM. The activities of Collector Gross vis a vis the administration of the test is a matter of controversy between the Carrier and the Organization. Collector Gross stated that at 5:50 AM she asked the crew if they were ready to provide a sample and they indicated that they were not ready at that time. She then asked them for their railroad identification cards and wrote down these numbers. She added that she looked at her watch at the time and noted in her Collector's Remarks that it was 5:55 AM and the test had started (Tr I 23-24). Ms Gross testified that, when the crew indicated

they were not ready to make a sample available, she read them Carrier's Instructions from a card that are contained in Ex K. She further testified that the card she read from was prepared by her Company and approved by the Carrier. She added she placed on the table the pamphlet containing the Carrier's Instructions (Ex K (Tr 27-31)). She testified that although the Carrier's pamphlet was available to the Claimants, not one of them read it (Tr 1-26-27).

The Organization protested that the Collector never informed the crew that the test had now commenced and never informed them what the timepiece was which she was using to tell the time.

Manager of Yard Operations-Portland-Meldman testified he was present with the Collector in the Conference Room when the crew was brought in for the test. He stated he did not know the time the test officially began. He added he had heard the Collector read the Instructions to the crew but he could not say whether they understood them (Tr I-247). He stated that while he was present he did not hear the Collector instruct the crew to drink no more than 24 ounces of liquids in the next two hours (Tr I-247-249). He added that he heard one of the crew members state that he had voided his bladder just before he had been told that the was to take the test (Tr I-240).

Portland Manager of Operating Practices Breeden stated that he did not know when the test commenced, but around 7:30 AM the Collector told him that the test had begun at 5:55 AM. He stated that he had discussed the two hour limit with the Collector in the

presence of the crew. He also stated that during his conversation with one of the crew, that individual told him that the two hour limit would expire before overtime began (Tr I-252).

Mr. Breeden stated he heard Engineer Henderson say that he wanted to give a sample and the Collector told him to go to the bathroom and wash his hands - but he did not know what time this occurred (Tr I-253). Mr. Breeden added that before the Collector and crew could leave the Conference Room, Manager Laughlin stopped the crew and told them to wait a minute and then he went back into his office and took the Collector with him. When Mr. Laughlin emerged from his office with the Collector, he had some forms with him which he asked the crew to fill out. Mr. Breeden stated since he had not been invited to go into Mr. Laughlin's office, he did not know what was happening. When the parties emerged from Mr. Laughlin's office, Mr. Breeden asserted he looked at the wall clock and it was 8:03 AM. Mr. Breeden also stated that when Engineer Henderson said he wanted to go and give a sample, and while the time was very close, there still would have been time for him to offer his sample (Tr I-250-60).

Manager Laughlin, one of the principals in this dispute, stated that he arrived at work around 6:00 AM and greeted the crew in the conference room and went into his office. Around 7:15 AM he conferred with the crew to ascertain whether they knew of the revised guidelines for drug testing. He added that he returned about 7:40 AM to determine whether they were going to comply and

encourage them to do so. He asserted that he spoke to them collectively rather than individually (Tr I-282). Manager Laughlin added that he evoked no verbal responses, only a nodding of heads as if they understood.

Mr. Laughlin testified that he knew by 7:40 AM the test period would end at 7:55 AM (Laughlin stated he had learned the starting time of the test from either the Collector or Mr. Meldman (Tr I-282). By this time Mr. Laughlin was of the opinion that the Claimants were not going to comply and since this was the first drug test under the revised guidelines, he concluded that he should obtain some advice on the procedures to be followed. He called the Superintendent's office in Boise, Idaho and reached Wayne Hanner. Mr. Hanner told him that the best course of action to follow would be to communicate with Dick Clark in Omaha as he was an expert on this subject. The parties held a three way telephone conversation and Mr. Clark gave him instructions on how to proceed. Mr. Laughlin stated that while this three way telephone conversation was going on, which was between 7:55 and 8:00 AM, he observed Engineer Henderson and a group of individuals leaving the conference room. In the interim Mr. Clark was faxing him a set of forms to record Failure to Provide Urine Specimen (Exs S.T.V.). Mr. Laughlin again called Messrs. Clark and Hanner and told them that the Collector concluded the test had ended at 7:55 AM, but Engineer Henderson had indicated to her he was willing to try to provide a specimen. When Mr. Laughlin related these facts to Mr.

Clark, the latter stated that Mr. Henderson could not complete the test since his actions were outside the guidelines. Mr. Laughlin stated this occurred between 7:55-8:00 AM (Tr I-293). When Mr. Laughlin was recalled to clarify his testimony, he stated that he received the forms Mr. Clark faxed him from Omaha at approximately 7:50 AM (Tr I-25).

With respect to timepieces, Mr. Laughlin testified he relied on his own watch and the wall clock to develop the various time frames in this case. He stated that he had not looked at the Collector's watch (Tr I-297-298).

Ms. Brandow, an Assistant Agent testified that the Claimants had been removed from duty prior to 7:55 AM. She stated that she had to make an important call at 7:45 AM and it was only a few minutes after that the crew was preparing to give a sample. She added that Mr. Laughlin stopped the test prior to receiving the fax (Tr II 13-15). She added that Mr. Laughlin had a business appointment at 8:00 AM and this business visitor was already outside Mr. Laughlin's office before 8:00 AM.

After the Claimants were removed from service they reported the same day to the Carrier's Medical Officer who dispatched them to a local physician who, after examining them, reported to the Carrier's Medical Officer that they did not suffer from any blockage or restriction of their urinary tract.

Engineer Henderson testified that while the Collector read her instructions from a laminated card prepared by her company, she did

not read any instructions from the Carrier's pamphlet. He also testified that he did not provide a sample between 5:55 and 7:55 AM because Manager Laughlin stopped him from so doing at 7:48-7:49 AM (T II-35-36).

Claimant Pasco testified that the Collector had not told him when the test commenced. He was not aware that there was a two hour limitation until 7:40 AM when the Collector mentioned it to Mr. Laughlin (Tr II-52).

Mr. Pasco stated he did not provide a sample because he had no opportunity to do so. Mr. Laughlin stopped him at 7:47 AM before he could deliver a specimen. He added that he was not insubordinate and he intended to follow all Carrier rules. It was the premature termination of the test that prevented him from providing the urine specimen.

Claimant Meyer stated that he had not provided a urine specimen because he had just evacuated his bladder before he had been informed that he had to report for a random drug/alcohol test.

The Carrier's October 4, 1994 letter of dismissal not only charged the Claimants with violating the Code of Federal Regulations 49 Part 40.25, the Carrier's Drug and Alcohol Policy, but also Carrier Rule 1.6(3) Insubordination.

The Investigation was quite extensive. It convened on September 19, 1994 at 1:00 PM and continued until 11:05 PM and reconvened on September 20, 1994 at 9:22 AM and concluded at 12:35

PM. The transcript of the proceeding was 394 pages and contained 37 exhibits.

Carrier's Position

The Carrier states that the Board should sustain the discipline assessed the Claimants because the record contains substantial credible evidence to prove that the Claimants were guilty as charged and there was no merit to the Organization's procedural objections.

With regard to the interposed procedural objections, the Carrier states that it was not a material defect for the Hearing Officer to supply in advance Carrier witnesses with questions he had prepared on matters he wanted to be addressed, but without any suggested answers to these prepared questions. The Hearing Officer prepared these questions in order to elicit the basic and material facts of the dispute. However, no witness was coached on what to say and all witnesses were enjoined to answer all questions truthfully and completely. The Hearing Officer supplied the Claimant's Representatives with copies of the prepared questions and there was never any attempt on his part to conceal anything about these prepared questions.

The Carrier adds there was no procedural defect in having the Notices of the Investigation prepared by staff officers such as the Assistant Director of Labor Relations or by the Office of the Medical Director. The Carrier asserted that this is the purpose

and function of staff officials, namely, to assist line officers to carry out their duties.

The Carrier denied that the Hearing Officer did not conduct the Hearing in a fair and unbiased manner. All the witnesses the parties wanted to call were afforded ample opportunity to testify. The Carrier insists that the Organization cannot show anywhere in the record where the Hearing Officer's conduct was inappropriate. The Carrier denies that the tone and the manner of the Hearing was in any way adversely affected by the short appearance of Superintendent Heavin at the Hearing.

The Carrier states that there is no basis to vacate the discipline on alleged procedural defects, but there is valid competent evidence in the record to prove that the Claimants were guilty of violating both the federal regulations and company rules dealing with drug and alcohol testing.

The Carrier maintains that the Claimant's deliberate refusal to submit to the mandatory random tests constituted insubordination which is a dischargeable offense.

The Carrier asserts that the voluminous record of the Investigation clearly shows that the Collector started the test at 5:55 AM when she asked the Claimants if they were ready to provide a sample, but when they indicated they were not ready to provide a sample, the Collector collected their identification cards and read them the Ameritest card which paraphrased the FRA regulations, i.e., if they could not produce a sample they were to drink not

more than 24 ounces of fluid during the next two hours. If they were unable to provide a specimen the test would be discontinued and the employees would be referred to the Carrier's Medical Officer. The Collector also placed the Carrier's Instruction pamphlet on the table for the men to read. However, during the two hour period no Claimant attempted to read the pamphlet or supply a specimen. Accordingly, the Collector told Manager Laughlin that the test period had ended at 7:55 AM, and since no specimen had been provided during the test period, Mr. Laughlin took the Claimants out of service and told them to report to the Carrier's Medical Officer.

The medical examination revealed there was no medical reason for the Claimants not to provide a urine sample. Accordingly, the Carrier determined that the Claimant's conduct amounted to a refusal to comply with FRA Regulations and the Carrier Rules concerning drug and alcohol testing and constituted insubordination which was a dischargeable offense. The Carrier adds that under its new UPGRADE Discipline Policy insubordination is a Level 5 violation punishable by dismissal. The Carrier adds that any failure to comply with the Company's Drug and Alcohol Policy would be construed as insubordination.

The Carrier states that there is no merit to the Organization's contention that on September 7, 1994 the Claimants were unaware of the changes in the regulations and rules that required employees being tested to provide a specimen in two hours

rather than the former eight hours. The change had become effective on August 15, 1994 and had been well publicized in advance throughout the Company. The Carrier asserts the Claimants were painfully aware of the change and resented it, and refused to comply with the law in utter defiance of it.

The Carrier states the Organization has laid great stress on the fact that the Collector read her instructions from an Ameritest card. While the wording on this card was not identical to the wording of the federal regulations, this was a distinction without a difference. The wording on the Ameritest card conformed to the spirit and intent of the federal regulations and the wording of the card contained all the essential information and had been approved by the Carrier's Law Department.

The Carrier states it is significant that the Collector, after she had read the instructions from the card, then restated them in her own words and asked the crew if they had any questions. But no Claimant raised any questions either to the Collector or any Carrier official during the entire two hour period of the test.

The Carrier emphasized that its instructions were also contained in its blue pamphlet (Ex K) which was available for the crew to read for themselves.

The Carrier states that the crew was informed several times during the test period by both Mr. Laughlin and Mr. Breeden that they had until 7:55 AM to provide the necessary samples. It adds that Manager Laughlin observed Engineer Henderson at 7:57 AM

leaving the conference room, and thinking that Mr. Henderson was leaving the premises, ordered him to stop. The Carrier adds that since the two hour period had passed, Mr. Laughlin ordered the Collector to come to his office where she participated in the telephone conversation that Mr. Laughlin had with Mr. Clark and Mr. Hanner.

The Carrier states that Mr. Clark, an expert in drug testing, told Mr. Laughlin that since the test period had ended, he could not accept Mr. Henderson's offer to supply a sample. The Regulations had to be observed strictly.

The Carrier asserts that there is no substance to the Claimant's principal defense that they failed to comply with the instruction to produce a urine specimen within the federal mandated two hour limit, because they had been prevented from so doing by Manager Laughlin. It states the record in this case negates this defense. In any event, the Carrier maintains the Board is aware that where there is conflicting testimony, it is a matter for the Carrier and not for the Board to resolve.

The Carrier maintains that, absent evidence of a clear abuse of managerial discretion, the Board is without authority to decide whether it agrees with the Carrier's decision as to the guilt and the question of discipline administered the Claimants. The Carrier adds the only issue for the Board to decide is whether there is substantial evidence in the record to sustain the assessed discipline.

On the basis of this record, the Carrier states that there was no procedural or substantive information in the record to reverse the discipline, therefore, the Board should deny the claims and uphold the discipline because the evidence shows the Claimants willfully refused to comply with the provisions of the relevant regulations and rules on random drug testing.

Organization's Position

The Organization states that the discipline imposed on the Claimants should be vacated because the Carrier committed procedural errors which denied the Claimants their contractual right to a fair and impartial hearing. The record further reveals the Carrier did not comply with the terms of the federal regulations and the evidence also reveals that the Carrier denied the crew the opportunity to offer a specimen within the requisite time period.

The Organization states that since this was the first case the Carrier was testing under the revised 1994 regulations, it apparently wanted to make an example of the Claimants, in order to show other employees how tough it would be in enforcing the revised regulations.

With regard to the substantive aspects of the regulations, the relevant time factors were a major consideration. Nevertheless, there was never any effort made to ascertain whether the Collector's time piece was accurate or whether it had been

validated. Nor was any effort made to determine whether the 5:55 AM alleged starting of the test was the correct time, and it was not checked against any other certified time piece. In basing a test in which the time period is an essential component, the Carrier took no measures to verify the accuracy of the Collector's watch. Nor was there any evidence in the record to show that the Collector and Manager Laughlin compared time pieces to make sure their actions were in "sync".

Manager Laughlin was equally ambiguous as to the time piece he used. He stated that he looked at his watch and also looked at the wall clock. The Organization asserts that before the Carrier deprives an employee of his livelihood, the facts upon which such action is taken should be accurate and verified, particularly as in the instant case where there was a difference of two minutes that could make the action permissible or violative.

The Organization states that there is a conflict in the record as to when the test started. There is no credible evidence that the Collector directly and specifically told the crew when the test started. The Organization notes that Manager Meldman testified that he did not know what time the test started although he was present when the Collector first addressed the Claimants. Manager Breeden also was not certain when the test commenced. Mr. Clark who made the definitive decision not to continue the test, stated he did not know when the test started. He did learn it he said by the time the Investigation convened (Tr I-176). The Organization

also contends that Manager Laughlin was uncertain as to the time the test started. The Organization also contends that Manager Laughlin was uncertain not only as to the time the test started but when it ended. He used his own watch which he had not checked with the Collector.

In short the Organization asserts that the test was not administered within strict limits that such a test required. It is clear that parties did not know when the test began and when it was to end. If the Collector knew she kept it a secret. The Organization states the Collector really did not know the test would end at 7:55 AM. She informed Manager Laughlin at approximately 7:40 or 7:45 AM the time the test started which was 10 or 15 minutes before Mr. Laughlin could independently determine the test was to end. The Organization asserts the record indicates that at 7:55 AM the Collector did not really know that the test was going to end as she was sitting around with the crew. A few minutes later Engineer Henderson told her he wanted to produce a specimen but Mr. Laughlin stopped this attempt.

The Organization maintains the repeated contradiction in the testimony of the events as related by the Collector and Manager Laughlin is sufficient reason to vacate the discipline. Even if the time was correct as to when the test began and ended, it would still be unreasonable to terminate an employee or employees for a two or three minute period delay without granting them an opportunity to provide a sample they wanted to offer.

The Organization states the entire proceeding was marked by a predetermination of guilt. The comments and the letters of Carrier officials illustrate this point. It adds the testing procedure was flawed by bias, and the Investigation denied the crew due process.

The Organization asserts that the bias on the part of the Hearing Officer is evidenced by his preparing questions and perhaps even answers for the Carrier witnesses at the Investigation. The Hearing Officer tended to minimize testimony favorable to the Claimants and maximize the testimony or evidence favorable to the Carrier. The Carrier's General Staff Officers made efforts to prevent the Local Chairmen and Superintendent Heavin from resolving this dispute. The attempt of the Hearing Officer to dignify the statement of the Collector by calling it an affidavit and the use of staff officers from the Labor Relations Department and the Medical Department were designed to deny the Claimants the fair and impartial hearing they were entitled to receive.

The most overt evidence of the Carrier's bias and animus toward the Claimants was its refusal to permit Engineer Henderson and Claimant Pasco to give a specimen in the closing minutes of the two hour test, and then to remove them from service and terminate their employment. Such action requires the Board to sustain the claims.

Findings:

The Board, upon the whole record and all the evidence, finds that the employees and Carrier are Employees and Carrier within the Railway Labor Act; that the Board has jurisdiction over the dispute and that the parties to the dispute were given due notice of the hearing thereon.

On the basis of the total record, we find that it does not sustain the Carrier's action in dismissing the Claimants because they allegedly were insubordinate or they refused to supply a urine specimen pursuant to Code of Federal Regulations 49 Part 40.25 and the Carrier's Drug and Alcohol Policy. While the Board finds that the Claimants are not entitled to be completely exculpated for their conduct, nevertheless, their actions under the circumstances did not warrant the extreme disciplinary sanction of discharge.

At the outset the Board is constrained to state that the procedural objections interposed by the Organization to the September 19-20, 1994 Investigation are not well founded and do not support the request that these objections require the Board to vacate the discipline. The Board finds that the conduct of the Hearing Officer at the Investigation did not transgress the acceptable limits of fairness. With respect to all the other procedural objections, only one has a scintilla of merit, namely, the objection to the Hearing Officer preparing in advance a written list of questions to be furnished Carrier witnesses. There is no probative evidence that the Carrier also supplied answers to these

questions. The Carrier, however, would be well advised to discontinue this practice because supplying the questions to witnesses for an Investigation can sometimes suggest the answers thereto. Moreover, supplying the questions can destroy or remove the element of spontaneity and free and open discourse, and introduce the appearance of rehearsed testimony. The Carrier will gain more than it will lose by not following this practice.

The Board finds no credible evidence in the record to uphold a charge of insubordination against the Claimants. Insubordination is a term of art in Labor and Industrial relations. Since it usually involves the capital punishment of discharge, the proof of its existence has to be demonstrated beyond a peradventure of doubt. For this Board to find the Claimants guilty of insubordination it would have to find that the Carrier gave the Claimants a direct, clear, unequivocal order or directive that were clearly understood by the Claimants, and although this order or directive was clearly understood by the Claimants, nevertheless, the Claimants unequivocally refused to obey or comply therewith, despite the Carrier's warning of the consequences of refusal. The Carrier has to prove more to sustain a charge of insubordination than defining it as a refusal to take the drug test. In this case the refusal to take the test has not been proved.

The Board finds that the Claimants were not guilty of insubordination because the record indicates the Carrier officials, including the Collector used precatory rather than mandatory

language in directing the Claimants to submit urine samples. Asking the Claimants if they were ready, the reading an Ameritest Company card or placing Carrier instructions on the table of the Conference Room does not constitute an unequivocal direct order, so that a refusal thereof would support a charge of insubordination. Moreover, the central element of refusal to comply is lacking on the part of the Claimants. The record is bereft of any refusal on the part of the Claimants to refuse to take the test. On the contrary the record contains evidence that Claimant Pasco and Engineer Henderson wanted to give a sample before the two hour period had passed. Claimant Meyer offered an explanation why he could not offer a specimen.

The Board finds that this is not a record that will support a charge of insubordination. It may show disobedient or uncooperative conduct, but not insubordination, and therefore this was not a Level 5 violation.

When we turn to our analysis of the basic issue, namely, did the Claimants violate the regulations of the FRA and the Rules of the Carrier on Drug Testing, we find that, while the Claimants may not have been exemplars of rectitude for cooperation, nevertheless, their conduct did not warrant dismissal.

We have to note that the test was a time-elapsed test and it was incumbent upon the Carrier and its agents to clearly delineate the time as to when the test began and when it ended and the

instrumentalities used to measure the metes and bounds of the time span.

We find that none of these standards was used in administering the test. The Collector did not directly inform the Claimants when the test began. The Collector did nothing but make an entry or notation of the time on her register but said nothing more. Nor was the reading of her company abstract or putting the Carrier's pamphlet on the table constitute the kind of direct instructions that the situation demanded. Nor did the Collector directly tell the Claimants precisely when the test began or the timepiece being used to measure the time. We do not find that Manager Laughlin was more precise or exact than the Collector in delineating the boundaries of the test. Mr. Laughlin only knew what he had been told either by Mr. Meldman or the Collector as to when the test started. Mr. Laughlin testified that he was not certain as to how and when he learned of the critical limits or elements of the test.

We also find some uncertainty regarding the Carrier's termination of the test, i.e., did it act prematurely, especially in light of the alleged willingness of certain crew members to take the test. The Board finds that the rationale of random drug testing was to ascertain whether there were "dirty" employees on duty rather than to engage in a race against a clock. If the Claimants were ready and willing to take the test even two minutes after the time limit had expired, they should have been so permitted in order to achieve the objective of the testing process.

Under these circumstances it was unreasonable for the Carrier to remove them from service. However, despite the above findings, the Board finds that the Claimants were not entirely free from blame. It is hard to envision what the Claimants thought they were doing during the entire two hours that they were in the Conference Room. Did they think they were engaging in a "college bull session" or a "coffee klatch". They did not evince any cooperation or clearly inform the Carrier's officers as to their problems. The Board finds the Claimants did not cooperate with the Carrier to the extent that the circumstances demanded. They were disturbingly inarticulate. This lack of cooperation warrants discipline, and accordingly, the Board finds that these dismissals should be modified to a three month suspension.

This case illustrates the need for the Carrier to observe and comply with the niceties and spirit of the program as well as the

need for the employees to meaningfully cooperate in effecting the objectives of the program.

Award: Claim disposed of in accordance with the Findings.

Order: The Carrier is directed to comply with the Award, on or before May 30, 1995.

Jacob Seidenberg, Chairman and Neutral Member

B.A. Boyd, Jr., Employee Member DISSENTING IN PART (ATTACHED)

April 29, 1995

D.J. Gonzales, Carrier Member

PUBLIC LAW BOARD NO. 4561

AWARD NO. 45

EMPLOYEE MEMBER'S DISSENT

This member is dissenting to that part of the findings in Award no. 45 that held the Claimants' actions call for discipline.

This Board found, " The record is bereft of any refusal on the part of the Claimants to refuse to take the test", page 20. To find there was no refusal on the part of the Claimants, then to impose discipline is beyond the comprehension of this member.

I dissent to the finding that imposes discipline.

Byron A. Boyd, Jr.
Employee Member

June 26, 1995