

PUBLIC LAW BOARD NO. 4615

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BROTHERHOOD OF MAINTENANCE OF :  
WAY EMPLOYEES :  
"Organization" : Case No. 10  
vs. : Award No. 10  
CONSOLIDATED RAIL CORPORATION :  
"Carrier" :  
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STATEMENT OF CLAIM

Claim of the Pennsylvania Federation, BMWWE that:

(1) The dismissal of Mr. S. Smith for alleged "...failure to comply with the Conrail Drug Testing Policy as you were instructed in letter dated April 08, 1987, from Regional Medical Director P. F. Maranzini, D.O., in that you did not, within 45 days of that letter, provide a negative drug screen" was without just and sufficient cause, arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File CR-3219D).

(2) As a consequence of the violations referred to in Part (1) above, the Claimant shall be reinstated with seniority and all other rights including overtime and benefits unimpaired, his record shall be cleared of the charges leveled against him and he shall be paid for all wage loss suffered.

OPINION OF THE BOARD

Claimant, S. Smith, was a Trackman. As is typical with many employees who occupy like positions, Claimant was essentially a seasonal employee who would normally be furloughed for the winter until the following spring.

Claimant was recalled to duty for the 1987 production season and, as part of his return to duty physical conducted on April 2,

1987, was required to submit a urine sample. Carrier was subsequently notified by Roche Biomedical Laboratories, the company that performs all of Carrier's drug screen urinalysis work, that Claimant's specimen allegedly tested positive for cannabinoids.

In accordance with Carrier's policy on drugs, Claimant was medically disqualified from service by letter dated April 8, 1987 from Carrier's Medical Director. Claimant was instructed therein to rid his system of cannabinoids and other prohibited drugs and to provide a negative urine sample within 45 days, which was by May 23, 1987, and that his failure to comply with these instructions may subject him to dismissal. In addition, the Medical Director recommended in this letter that Claimant contact Carrier's employee counselor and follow any recommendations that the counselor might make on Claimant's behalf. The Medical Director further advised that if Claimant entered a counselor-approved educational or treatment program, the time period for providing a negative urine sample could be extended.

Claimant did not enter the Carrier sponsored treatment program. He also did not produce a negative urine specimen within the prescribed 45 day limit.

By notice dated June 11, 1987, Claimant was notified to attend a hearing on June 23, 1987. Claimant was subsequently provided with notice sent via certified mail postponing the hearing until August 11, 1987. The hearing was held on that date despite Claimant not being present and the Organization

objecting to the hearing proceeding in his absence. Following the hearing, Claimant was notified by Notice of Discipline dated August 24, 1987 of his dismissal in all capacities for failing to comply with Carrier's drug testing policy.

Carrier's drug testing policy, insofar as it is applicable to this case and all cases now before this Board, was unilaterally established and set forth in a letter from Carrier's Chairman and Chief Executive Officer to employees dated February 20, 1987. Carrier's Chairman stated therein that "safety is inconsistent with the use of illegal drugs by any employee, because such use endangers the welfare and safety of other employees and the public. Accordingly, Conrail is establishing a policy on drugs which is an enhancement of our current medical practice and standards. A summary of that policy is included with this letter...". The referenced policy summary which was attached to the letter stated the following:

Conrail will include a screen for drugs when the following medical examinations are conducted:

pre-employment physical examinations;

required periodic and return-to-duty physical examinations;

before return to duty and during a follow-up period after a disqualification for any reason associated with drug use; and

executive physical examinations.

An employee with a positive test for illegal drugs will:

be withheld from service by Health Services;

be required to provide a negative drug test

within 45 days, at a medical facility to which the employee is referred by Conrail's Medical Director, in order to be restored to service. This 45-day period begins with the date of the letter notifying the employee of his/her being withheld from service.

An employee whose first test is positive will be offered the opportunity for an evaluation by Conrail's Employee Counseling Service.

If the evaluation reveals no addiction problem, in order to be returned to service a negative drug test must be provided within a 45-day period beginning with the date of the letter notifying the employee of his/her being withheld from service.

If the evaluation indicates an addiction problem and the employee enters an approved treatment program, the employee will be returned to service upon recommendation of the treatment program and the Conrail Employee Counseling Service and must provide a negative drug test within 125 days of the date of the initial positive test. This time period can be extended by Health Services when warranted.

An employee who fails to comply with the recommended treatment plan will be required to provide a negative drug test within the 45-day or 125-day time period referred to above, whichever is less, in order to be returned to service.

An employee may be subject to dismissal if he or she:

refuses to submit to drug testing as part of the physical examination;

fails to provide a negative test within the 45-day or 125-day period referred to above, whichever applies; or

fails to provide negative drug tests in a three year follow-up period arranged and monitored by Health Services.

This policy applies to agreement and non-agreement employees subject to required physical examinations.

denied.

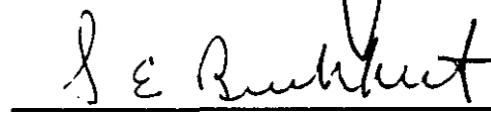
Pursuant to Carrier's policy, Claimant was given a return to work physical which included a drug screen. The testing procedure used in that test was adequate. Carrier has established that the test result accurately showed that Claimant had cannabinoids in his system, and that the presence of that substance was as a result of use by Claimant rather than any other reason. Claimant did not, as required by the drug testing policy, provide a negative sample within 45 days or refer to the employee counselor. Finally, there are no irregularities or other mitigating factors particular to this case which can be found to warrant sustaining of the claim. In this regard, the Board concludes that the record evidence establishes that Claimant was properly notified of the hearing date, and that there is no reason to believe that his non-attendance was anything other than voluntary on his behalf. Accordingly, the claim must be denied.

#### AWARD

Claim denied.

  
F. DOMZALSKI  
Carrier Member

  
J. DODD  
Organization Member

  
S. E. BUEHHEIT  
Neutral Member

APR 12 1991