

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
INDIANA HARBOR BELT RAILROAD COMPANY

Case No. 12

Dispute: Claim of the Brotherhood:

- (1) That the dismissal of Machine Operator Robert Winbush, February 24, 1988, as the result of the investigation of February 14, 1988, be stricken from his record and that he be reinstated to service and compensated for all monetary losses sustained.

Findings:

Claimant was employed as a machine operator by Carrier. On February 11, 1988, Claimant was instructed to attend an investigation: to determine the facts and your responsibility, if any, for failure to comply with Carrier's letters of instruction to him of September 17, 1987, and September 30, 1987, in that he did not keep his system free from controlled substances and failed to provide a negative urine sample on January 25, 1988, when subjected to a retest.

The investigation was held February 18, 1988, and as a result, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was aware of the Carrier's policy against the use of drugs and that on the date in question the Claimant tested positive for marijuana. Therefore the Carrier had sufficient evidence to impose discipline.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find its action

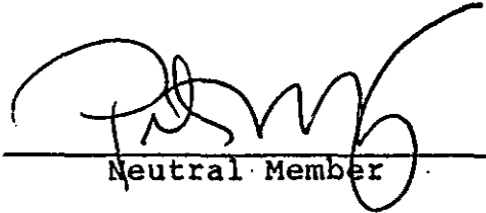
to have been unreasonable, arbitrary or capricious.

There is no question that when the Claimant was reinstated to service in 1987, he was advised that he could be tested for drugs and that any future positive result from a test could lead to dismissal. However, the record also reveals that the Claimant has been an employee of the Carrier for 35 years. He is currently in drug counseling to overcome his problems.


This Board finds that if he successfully passes the drug counseling program that he is in, receives a recommendation from his counselor, he shall be reinstated without back pay. This reinstatement will be a one last chance for this Claimant. The Claimant can be required at any time in the next three years to take a drug and alcohol screening test, and if he tests positive, the Carrier will have every right to finally terminate his employment.

AWARD

Claim sustained in part. The Claimant shall be reinstated to employment without back pay after his successful completion of the drug rehabilitation program. This reinstatement shall be a last-chance reinstatement.


Neutral Member


Carrier Member


Organization Member

Date: 7-27-90