

PUBLIC LAW BOARD NO. 4698

Case No. 72 Award No. 72

PARTIES TO DISPUTE:

Brotherhood Railway Carmen Division Transportation-Communications
International Union
And
CSX Transportation, Inc.

STATEMENT OF CLAIM:

- No. 1 That the Carrier imposed the extreme and unwarranted discipline of Dismissal upon Carman D. R. Hoerst as the result of an Investigation held on March 15, 1994 to determine alleged insubordination in connection with adulteration of short notice follow-up toxicological test specimen on February 17, 1994."
- No. 2 That Carman D. R. Hoerst be reinstated to the employ of the Carrier, with all seniority rights unimpaired, and that he be made whole for all lost wages beginning on February 25, 1994 (the date the Carrier non-contractually removed Carman Hoerst from service) until adjudication of this dispute, and that all notations of this Dismissal be removed from his Service/Personnel record.

FINDINGS: On February 28, 1994, the Claimant was directed to attend a formal investigation. The charge letter, in pertinent part, stated:

"You are charged with insubordination in connection with a follow-up drug screen specimen submitted by you on or about February 17, 1994, in Cincinnati, Ohio.

By virtue of the fact that the analytical laboratory, Compuchem Laboratories Inc., reported that your urine specimen was adulterated with the chemical glutaraldehyde.

These findings are considered to be a refusal to take the test."

Following the investigation, the Carrier found the Claimant guilty as charged and he was separated from the service.

The Claimant was a participant in the Carrier's Employee Assistance Program ("EAP") and, in accordance with the provisions of the EAP (of which he was aware), he became subject to periodic drug testing. He also had been informed that Examination Management Services, Inc.

("EMSI") would serve as the Carrier's agent for the collection of specimens and that failure to comply with EMSI's instructions would be considered the same as a refusal to undergo testing. Therefore, the Claimant was well aware of the employment conditions that he was subject to for continued employment.

On February 17, 1994, the Claimant submitted a drug screen specimen which was found by the analytical laboratory employed by EMSI to have been adulterated with Glutaraldehyde. This finding ultimately caused his discharge from the service of the Carrier.

The Board has carefully reviewed the transcript of the hearing and finds that the Claimant received a fair and impartial hearing within the framework and context of the process used in this industry.

The controlling question in this case is whether the urine specimen was adulterated and whether the chain of custody was compromised in some manner.


The Claimant was aware of the Carrier's policy and procedure with respect to the Carrier's drug testing policy. He certified, at the time when he was tested, that his specimen bottle had been sealed with a tape-proof seal in his presence and that the information on the Drug Testing Custody and Control Form and on the label affixed to the specimen bottle was correct. There was no evidence presented that the chain of custody did not remain intact and that the test was not properly conducted.

In view of all of the foregoing, the Board has no basis to sustain the claim.

AWARD

The claim is denied.


Gerald Gray
Organization Member


Ekehard Muessig
Neutral Member


J. T. Klontzak
Carrier Member

Dated: January 13, 1995