PUBLIC LAW BOARD NO. 4901

AWARD NO. 125
CASE NO. 125

PARTIES TO
THE DISPUTE: United Transportation Union (CT&Y)

vs.

Atchison, Topeka and Santa Fe Railway
(Southern Region)

ARBITRATOR: Gerald E. Wallin

DECISION: Denied

DATE: July 21, 1995

STATEMENT OF CLAIM:

> Claim is made on behalf of Trainman G. F. Hargrove, Temple, Texas, Southern Region, AT&SF Railway Company, for reinstatement to the service with seniority and all other rights unimpaired with payment for all time lost including time spent attending investigation and all notations removed from his personal record as a result being issued excessive discipline. Claim is also made for payment for all Medical, Surgical, Life, Dental Benefits restored and for reimbursement of any monetary loss for such coverage while dismissed from service.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The essential facts are not in dispute. On February 14, 1994, Claimant provided a urine sample for random drug testing. He adulterated his specimen with glutaraldehyde (Urinaid) to avoid detection of usage of a controlled substance.

Carrier's Rule 607 prohibits dishonesty and warns of dismissal from service for violations. In addition, Carrier's Rule 9, regarding the use of Alcohol and Drugs provides as follows:

> Any one or more of the following conditions will subject employees to dismissal for failure to obey instructions:

* * *

(c) Refusal to provide a urine specimen for testing when instructed under the terms of this Policy or Federal or State regulations. Tampering with a urine sample by substitution, dilution or alteration will be deemed a refusal.

The Organization contends that the punishment of dismissal is too harsh in light of the circumstances. It maintains that Claimant had nearly 16 years of apparently unblemished service that should mitigate the situation. The Organization also cited prior awards in support of its position. In addition, the Organization notes that the FRA only mandates a 9 month disqualification where an employee refuses to submit to testing. The FRA views tampering with a specimen to be the same as a refusal.

The role of this Board is limited to that of an appellate review of the record developed by the parties in their handling of the matter on the property. Our charge is to determine whether the record contains substantial evidence to support Carrier's disciplinary action. On the record before us, we find that Carrier's action is supported by substantial evidence. The Claim, therefore, must be denied.

AWARD:

The Claim is denied.

Gerald E. Wallin, Chairman
and Neutral Member

J. L. Easley,
Organization Member

Tim M. Hart,
Carrier Member

Dated this 21th day of July, 1995 in St. Paul, Minnesota.