

PUBLIC LAW BOARD NO. 4950

NEW JERSEY TRANSIT RAIL OPERATIONS, INC. :
"Carrier" : Case No. 96
vs. :
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES : Award No. 89
"Organization" :

OPINION OF THE BOARD

By notice of hearing dated November 10, 1994, Carrier instructed Claimant to appear at a hearing in connection with the following:

On Friday, November 4, 1994, at approximately 10:35 a.m. at Hoboken Terminal as you were being interviewed by Mr. Daniel P. Smith, he noticed alcohol on your breath. Your eyes were red, your speech slurred and you had a stagger to your walk. Mr. Smith asked you if you had been drinking. You responded that you drank all night and that you had your last drink at 5:00 a.m. on November 4, 1994. Mr. Smith transported you to Maplewood where you were underwent a Drug and Alcohol test. You tested positive for both cocaine and alcohol.

Therefore, in connection with this matter you are charged with violation of: NJ Transit Drug and Alcohol Free Work Place Policy Section IV A 3 "Prohibitions" (Page 6) and M W Engineering Department Safety Rule G.

Following the hearing, Carrier found Claimant guilty as charged and assessed him discipline of dismissal from all service. The Organization appealed, in part based upon the contention that Carrier's EAP Program had failed Claimant by not recognizing that he had a serious problem and also based upon the

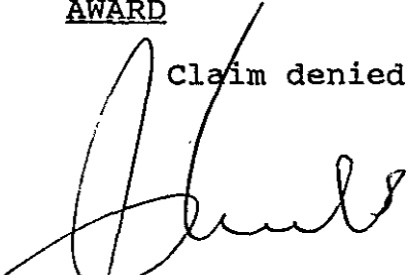
stress and domestic problems Claimant was then experiencing.


The Board has determined that the claim must be denied.

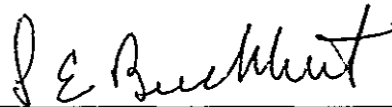
The Board finds substantial evidence in the record to support the allegations against Claimant. As Claimant tested positive for both cocaine and alcohol, he was in violation of Carrier's Drug and Alcohol Free Work Place Policy. Furthermore, while Claimant did enter the EAP in 1991, the evidence does not establish that officials at the EAP acted in a manner which now justifies Claimant's reinstatement. Finally, neither the circumstances of Claimant's personal life, nor his commendable determination to seek assistance after the events here at issue, justify the Board ordering Claimant reinstated in light of the seriousness of the offense involved.

AWARD

Claim denied.



P. Charles
Carrier Member

G. Barbat
Organization Member

S. E. Buchheit
Neutral Member