

PUBLIC LAW BOARD - NO. 5418

Case No. 28

Award No. 28

PARTIES

to

DISPUTE:

Brotherhood of Maintenance of Way Employees

- and -

Springfield Terminal Railway Company

STATEMENT OF CLAIM:

Appeal of the discipline of dismissal imposed on
J. Faiella on November 2, 1998.

FINDINGS: Subsequent to a hearing held on October 23, 1998, claimant was found guilty of violating General Rule GR-G, in that he tested positive for marijuana at a random DOT required drug screen test taken on October 1, 1998.

At the October 23 hearing, claimant's test results were introduced into the record, which conclusively showed that he tested positive for marijuana. Records show he had a positive reading of 36 NG/ML, which was more than twice the 15 NG/ML cutoff point of the gas chromatography mass spectrometry (GCMS) test.

During the hearing, claimant emphatically asserts that he does not use drugs, and that any presence of marijuana in his system may be the result of passive inhalation. He testified that six days prior to his drug screen test he was traveling with friends who heavily used marijuana, and thus he concludes that he is a victim of secondary inhalation.

The Organization asserts that claimant should not have been selected to undergo the random drug test because he did not meet the required prerequisites (possess a valid CDL license and occupy a position requiring a CDL license) to be placed in the random selection pool for drug and alcohol testing. They point out that he did not possess a CDL license and he was erroneously awarded a position as a CDL crane/equipment operator. Therefore, since he did not

possess a CDL license and did not operate equipment requiring a CDL license, it was improper for the Carrier to place him in the random selection pool, and that any results from an invalid test is also invalid.

The Carrier asserts, that notwithstanding the fact that he did not possess the CDL license and admittedly should not have been awarded the assignment, the fact remains that he held an assignment that was rightfully enrolled in the random Drug and Alcohol testing program, and he tested positive for prohibited drugs. Further, they reject the claimant's creative defense based on alleged passive inhalation and deem it to be without merit or support.

After a thorough review of the parties' submissions and other documents filed with this Board, we agree with the Organization's position that the claimant should not have been tested because he clearly lacked the required prerequisites to be properly placed in the random selection pool. However, we simply cannot ignore the claimant's test results which conclusively showed that he had prohibited drugs in his system, and we reject claimant's theory of secondary inhalation. Accordingly, while the Board does not, in any way, minimize the seriousness of drug-related misconduct, we deem that under all of the factors involved in his case, that claimant should be given another opportunity to become and remain a reliable employee. Hence, claimant shall be returned to service but without any back pay for time lost. He will also be subject to the following:

Upon his return to active service, claimant will be subject to 3 years of random drug and alcohol testing.


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This Award is rendered with the understanding that it will not be considered as establishing a precedent in any future case and it will not be used or referred to in the future by either party.

AWARD: As specified in the Findings.


Francis J. Domzalski
Neutral Member


T. W. McNulty
Carrier Member


B. A. Winter
Organization Member

Dated: 12-18-98