

PUBLIC LAW BOARD NO. 5418

Case No. 43 Award No. 43

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 Paul Malinowski on November 15, 2000.

FINDINGS: The issue herein came about as a result of the claimant's refusal to submit to a Drug & Alcohol test.

The facts involved in this case show that on October 19, 2000, while working as an Equipment Operator with a tie crew, the claimant and several other employees moved their equipment beyond the limits of the Form D authorization, which had been obtained by the Foreman. Following the incident, the claimant and two other employees were instructed by a supervisor to submit to a Drug and Alcohol test. The claimant was the only employee who refused to take the test and was taken out of service. He was subsequently found guilty of violating Carrier's General Rule GR-C (insubordination).

At his November 3, 2000 hearing, the claimant gave the following response to a question regarding the instructions that he was given on October 19, 2000:

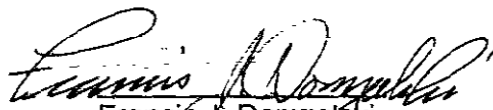
"M. Cary: So, in essence, what you have done when you were instructed to go to the hospital with the other people involved in the incident, you refused to go to take a drug and alcohol test, is that correct?


M. Malinowski: *I refused because I wasn't sure of what my rights were. I did not refuse to take a drug and alcohol test because he was just saying to take the test, I was refusing to take the test because I had no representation to tell me whether I was doing something right or something wrong. I did not want to say flat out, No, I don't want to take this test. All I had to say... I had to say something, and the only thing I could say was I'm not taking it at this time without any legal representation to tell me whether I'm doing the right thing or doing the wrong thing. I was confused. I was nervous. I didn't understand what was happening to me."*

The evidence conclusively shows, both by the testimony of supervision as well as the claimant, that he refused to obey a proper instruction. It has long been held that employee's must comply with reasonable instructions, as long as they do not pose a health or safety threat. We find neither was present in this case.

Therefore, under the circumstances that are in the record before us, the Board finds the Carrier did not misuse its discretion when it assessed discipline.

AWARD: The claim is denied.


Francis J. Domzalski
Neutral Member


T. W. McNulty
Carrier Member


B. A. Winter
Organization Member

Dated: 2-12-2001