

PUBLIC LAW BOARD NO. 5418

Case No. 46

Award No. 46

PARTIES

to

DISPUTE:

Brotherhood of Maintenance of Way Employees

-and-

Springfield Terminal Railway Company

STATEMENT OF CLAIM:

That B&B Mechanic Mark Affhauser was unjustly dismissed from service, effective April 18, 2002.

FINDINGS: On March 25, 2002, claimant was given a notice charging him with the following offense:

“Testing positive in connection with return to work physical and drug test on March 15, 2002 – Violation of Rule G.”

At claimant’s April 9, 2002 hearing, the Carrier introduced medical evidence that showed that Claimant tested positive for marijuana at his return-to-duty physical. His test results (49.0) were clearly beyond the GC/MS confirmation cutoff level (15). The Carrier asserts that they have zero tolerance for drug use in the work place and, based on the results of the claimant’s drug test, which was properly administered and shown to be correct, the assessment of dismissal in this case is proper and should remain undisturbed.

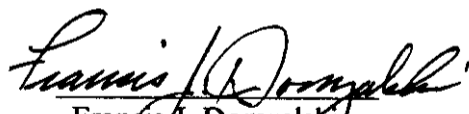
The Organization asserts that claimant did not violate the Rules for which he was found guilty of violating. They contend for a myriad of reasons that Rule G is not applicable to the facts and circumstances involved in this case. Notwithstanding those arguments, they point to the fact that claimant disputed the test results and, albeit he did not opt to have his split sample re-tested, he had an independent test done 15 days later which showed negative for marijuana. Therefore, they assert that his negative test result from an independent lab, proves that he was not in violation of any of the Carrier Rules and he should be reinstated.

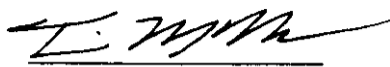
After a thorough review of the hearing record and the party's submissions, we cannot sustain the Organization's position in this case. Clearly, the claimant's independent drug test was not timely, and it was outside the chain of custody, therefore it cannot be deemed a proper test. Further, with regard to the Organization's various arguments pertaining to the applicability of Rule G, we note the exact issue herein involved in this case, was also addressed in a prior Arbitration Award rendered on this property by Arbitrator, R. M. O'Brien (PLB-4623 – Award No. 12). In his Award, Neutral R. M. O'Brien stated, in part, the following:

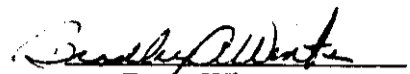
“It is clear to this Board that the claimant violated Carrier's General Rule G when his March 14, 1989 drug screen proved positive for marijuana. He was subject to duty at the time and would have resumed his employment with the Carrier had he passed his return to work physical. The claimant's use of narcotics (marijuana) when he was subject to duty therefore constituted a violation of Springfield Terminal's Rule G.”

We fully agree with the Neutral's reasoning and conclusion in that case, and find that said Award is clearly applicable to this case, which contains the same issues. Suffice to say, that in light of the clarity of this precedent Award on this property, this Board concludes that the instant case is also non-meritorious. Therefore, based on the seriousness of the proven offense, we have no basis upon which to alter the decision of the Carrier.

AWARD: The claim is denied.


Francis J. Domzalski
Neutral Member


T. W. McNulty
Carrier Member


B. A. Winter
Organization Member

Dated: 8-26-2002