

PUBLIC LAW BOARD NO. 5418

Case No. 57

Award No. 57

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 T. P. Georges. Effective May 7, 2004.

FINDINGS: This dispute arose as a result of the claimant being charged with the following offense:

“Violation of Rule G of the Springfield Terminal
Employee Safety Rules, when you tested positive on
a random drug screen administered on March 23, 2004.”

The record shows the claimant held a commercial driver's license (CDL), that placed him in the Carrier's random drug testing pool, pursuant to the following DOT regulations:

382.305 - Random Testing

“Any employee who holds a CDL and may be called upon at any time, on an occasional or emergency basis to drive must be in the random testing pool at all times; Including CDL employees who do not drive as part of regular job functions. A drug test must be administered each time the employee's name is selected from the pool.”

The Carrier asserts that undisputed evidence was introduced at the claimant's hearing, showing that he tested positive for Cannabinoids (THC) that exceeded the minimal allowable cut off level. They point out that the claimant requested a reanalysis of the split sample, and that also came back as being “positive”. In summary, the Carrier states the record conclusively shows that all applicable procedures were properly followed in this case, and there are no mitigating factors for the Board to consider.

The Organization asserts the claimant was improperly subjected to a random drug test. They

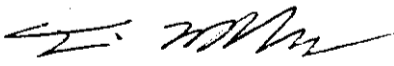
contend the position held by the claimant was an Electric Welding Foreman, which does not require him to possess a CDL license; therefore, his name should not have been placed in the random drug testing pool. However, in any event, the claimant questioned the accuracy of the Carrier's March 23rd test, and states he took another drug test on April 3rd, administered by his personal physician and the results of which were "negative". The claimant steadfastly denies that he used drugs.

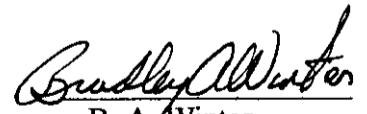
After a thorough review of the hearing record and the parties' submissions, we cannot sustain the Organization's position in this case. With regarding to the claimant's independent drug test, aside from the fact that it was not timely, it was outside the chain of custody and thus cannot be deemed a proper test.

Clearly, we are not unsympathetic to the Organization's arguments and statements proffered in claimant's behalf, and the Board does not lightly sustain the dismissal of an employee with claimant's years of seniority. However, in consideration of the serious nature of the proven offense, we have no proper basis to disturb the Carrier's determination in this case.

AWARD: The claim is denied.


Francis J. Domzalski
Neutral Member


T. W. McNulty
Carrier Member


B. A. Winter
Organization Member

Dated: 7-26-04