

PUBLIC LAW BOARD NO. 5584

PARTIES TO DISPUTE: United Transportation Union
Atchison, Topeka and Santa Fe Railway

STATEMENT OF CLAIM: Mr. A. J. Chance be reinstated with all rights unimpaired and with pay for all time lost, including time for attending formal investigation.

FINDINGS:

The Board, upon consideration of the entire record and all the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The record indicates that both parties raised various procedural objections on the property. As stated in oral presentations before the Board, the Carrier and the Organization have agreed to withdraw the procedural objections on a without prejudice basis.

The procedural issues having been disposed of, the claim will be considered on its merits.

On December 23, 1991 Claimant was advised by letter to attend a formal investigation scheduled for January 9, 1992 " . . . to determine the facts and place responsibility, if any, concerning report you allegedly failed to obey instructions of Rule 9.0(a) of the Santa Fe Policy on the Use of Alcohol and Drugs on December 20, 1991, in possible violation of Rule 9.0(a) of the Santa Fe Policy on the Use of Alcohol and Drugs, March 1991 Edition, involving possible violations of Rules A, B, C, D, 600 and 607, General Code of Operating Rules, Second Edition, effective October 29, 1989 and

supplement to Rule 607, as contained on page 190 of the System Time Table No. 2 in effect April 7, 1991."

On December 26, 1991, the December 23, 1991 letter was amended to include the possible violation of Rule G.

After a series of postponements, the investigation was held on February 18, 1992. On that same date, Claimant was notified that he was being removed from Carrier's service.

There are no significant disputes as to the facts. Claimant tested positive for a controlled substance in 1987 and again in 1991. He does not deny the usage that led to the positive results, nor is there any debate over the accuracy of the tests.

Under the Carrier's Policy on Use of Alcohol and Drugs, dismissal from service is prescribed in the following circumstances - -

Any one or more of the following conditions will subject employees to dismissal for failure to obey instructions:

- (a) A repeat positive urine test for controlled substances obtained under any circumstances.

Those employees who have tested positive in the past ten (10) years would be subject to dismissal whenever they test positive a second time.

- (b) Failure to abide by the instructions of the Medical Department/Employee Assistance Program regarding treatment and/or follow up testing.
- (c) Refusal to provide a urine specimen for testing when instructed under the terms of this policy or Federal or State regulations. Tampering with a urine sample by substitution, dilution or adulteration will be deemed a refusal.

Having tested positive twice in less than five years, the first positive test being in January, 1987 and the second in December, 1991, Claimant subjected himself to dismissal under paragraph (a) of the Policy.

The Organization maintains, however, that permanent dismissal in Claimant's case is unduly harsh when viewed in the light of the difference in Carrier's policy with respect to substance abuse as it existed in 1987 and the policy that was adopted in 1991. Specifically, the Organization argues that in 1987 reinstatement following removal from service for a positive reading was merely contingent upon the employee providing a negative test result within thirty days of his removal from service. Participation in the Carrier's Employee Assistance Program was not required, whereas under the policy adopted in 1991, participation in the Program is mandatory and reinstatement is conditioned to the successful completion of the Program. The presumption, according to the Organization, is that had Claimant had the benefit of the Assistance Program the first time around, in 1987, it is unlikely the second incident would have occurred.

The Board finds the argument unavailing. Carrier's Employee Assistance Program, while not mandatory, was nonetheless available to Claimant had he wished to take advantage of it in 1987. For his own reasons he chose not to.

The record clearly establishes that Claimant was guilty of violating Rule G, his second offense, the seriousness of which in this industry cannot be debated.

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AWARD NO. 2
CASE NO. 2

AWARD: The claim is denied.


Joan Cook, Jr., Chairman


T. M. Hort, Carrier Member


C. D. Davis, Organization Member

Dated this 11th day of July, 1994.