

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5735**

JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
JOSEPH A. MARKASE, CARRIER MEMBER
D. D. BARTHOLOMAY, ORGANIZATION MEMBER

JUN 5 1998
JHB

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

INDIANA HARBOR BELT RAILROAD COMPANY

Award No. 7
Case No. 7

Date of Hearing - May 8, 1998
Date of Award - May 31, 1998

Statement of Claim:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Track Foreman Donald A. Hunt for his alleged failure to refrain from the use of prohibited substances on July 15, 1997 was without just and sufficient cause and excessive punishment. (Carrier's File MW-97-040.)
2. Track Foreman Donald A. Hunt shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage losses suffered.

FINDINGS:

Public Law Board No. 5735, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

Claimant is a near ten-year employee, that was working as a Track Foreman at the time of his dismissal. On October 10, 1994, he tested positive for morphine. Under Carrier's Drug and Alcohol policy, Claimant was given an opportunity to rid his system of prohibited substances, return to service and become a productive employee. After providing Carrier with drug free urine samples Claimant was returned to active service on February 6, 1995. As a condition of his return he was required to undergo periodic drug testing during the next three years. One such test occurred two weeks after Claimant was returned to duty. On February 22, 1995, Claimant was required to submit for testing, which again indicated positive for morphine. When Claimant became aware of the positive test he requested a retest, which was performed on March 1, 1995. That test, too, indicated positive for morphine.

Claimant was cited to attend an investigation on a charge that he failed to refrain from the use of prohibited substances. That investigation was postponed and rescheduled several times, while Claimant participated in EAP. On May 15, 1995, on the advice that he was in compliance with EAP recommendations, Claimant was returned to duty. Shortly after his return Claimant was granted a personal leave due to the tragic death (murder) of his son. On August 8, 1995, Claimant returned to service.

On July 15, 1997, Claimant was selected for a DOT/FHWA random drug and alcohol screen. The breathalyzer test administered in this screen indicated positive for alcohol. Claimant was removed from service and cited to attend an investigation. At the investigation Claimant admitted that he was on the property at work while under the influence of alcohol on July 15, 1997. His excuse for showing up for work under the influence was an alleged confrontation with the individuals that murdered his son, which caused his relapse.

Following the investigation, Claimant was dismissed.

In appealing the dismissal to this Board the Organization argues that the tragic circumstances of Claimant's son's death and the subsequent confrontation with the alleged murderers should weigh in mitigation in his favor.

The Board harbors the greatest sympathy for a parent that loses a child in tragic circumstances. But no matter how great the tragedy may be, individuals affected by it are still responsible for their subsequent conduct. And a responsible individual simply is not allowed to report for work under the influence of drugs or alcohol, no matter what the circumstances happen to be. One's grief over the loss of a child is not a license to endanger the public and/or coworkers by reporting for work under the influence of drugs or alcohol. And, this was not the first time that Claimant was caught at work under the influence of drugs or alcohol - it was the third time. He was given two previous opportunities to keep his system free of prohibited substances. His third failure to do so warrants a conclusion that the discipline of dismissal not be disturbed.

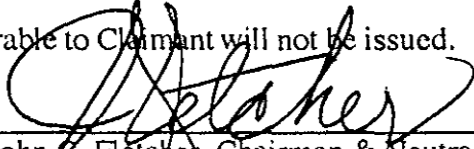
The grievance is without merit. It will be denied.

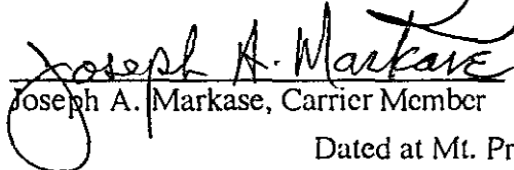
A W A R D

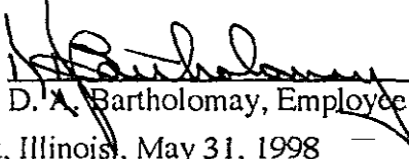
Claim denied.

O R D E R

An award favorable to Claimant will not be issued.


John E. Fletcher, Chairman & Neutral Member


Joseph A. Markase, Carrier Member


D. A. Bartholomay, Employee Member

Dated at Mt. Prospect, Illinois, May 31, 1998