

PUBLIC LAW BOARD NO. 5831

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

- and -

Union Pacific Railroad Company

AWARD NO. 1

CASE NO. 1

STATEMENT OF CLAIM:

Claim on behalf of S. M. Alewine for reinstatement to service with payment for lost time and seniority rights restored as a result of his dismissal on December 21, 1994, in connection with charges of tampering with his drug test.

FINDINGS:

This Public Law Board No. 5831 finds that the parties herein are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By Carrier notice dated December 21, 1994 the Claimant Engineer S. M. Alewine was dismissed from the service of the Carrier as set below:

St. Louis, Mo. - December 21, 1994
Discipline Notice No. S9401093

Mr. S.M. Alewine, Engineer
4002 Willow Springs
Little Rock, AR 72206-5316

Dear Mr. Alewine:

You are hereby advised that your record has this date been marked dismissed for your violation of rule 607(4) of General Code of Operating Rules, effective October 29, 1989, and of Union Pacific's drug and alcohol policy, effective February 12, 1993, Section IX, by tampering with your urine sample in order to prevent a valid test, which constitutes a refusal to provide a sample, during the reasonable cause drug and alcohol test, administered to you on February 18, 1994, while you were performing service as Engineer on train ALNL-17, N. L. Rock, Arkansas.

Your record now stands: Discipline status level 5
 ...Dismissed from the
 Union Pacific Railroad, per attached
 upgrade Forms No. 3 and 5.

Signed by E. J. Darlington, Manager Train Operations

The Organization appealed this discipline, and the matter is properly before this Board for adjudication.

We have considered each of the procedural objections raised by the Organization and we are compelled to conclude that a basis does not exist to set aside the discipline based on these contentions.

We find that substantial evidence of record supports the Carrier's finding of responsibility in this case. This evidence includes the Claimant's testimony that his urine specimen was sealed in his presence at the collection site, without exception, the certified laboratory documents from the Nichols Institute which indicated that the chain of custody was preserved and the sample was the Claimant's sample, and the final report of the laboratory which indicated that the specimen was adulterated with the presence of

glutaraldehyde. The Claimant's tampering with a urine sample constitutes a refusal to provide a valid sample and it constitutes major misconduct on his part.

After full consideration of the proven misconduct in this case, but considering his years of service and his good work record, the Board believes that this discipline has now served its purpose. Mr. Alewine shall be returned to service with all rights unimpaired but without backpay, and he shall be subject to the Companion Agreement as a condition of his return to service.

AWARD

As per Findings.

ORDER: The Carrier has been notified of the decision of the Board and has complied with the interim award.


D. P. Twomey
Chairman and Neutral Member


Dennis E. Penning
Organization Member


J. Disant


AC Hallberg
Carrier Member

DATED: 10/15/96