

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 5905**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

and

**ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

)

) Case No. 12

)

) Award No. 13

)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

D. M. Gevaudan, Carrier Member

Hearing Date: September 29, 2000

**STATEMENT OF CLAIM:**

1. The dismissal of Trackman E. Gonzalez for his alleged violation of Roadway Worker Protection Rules 17.2 and 17.3.2 on November 8, 1999, was without just and sufficient cause.
2. As a consequence of the violation referred to in Part (1) above, Claimant's record shall be cleared and he shall be allowed to return to work immediately with compensation for all lost wages.

**FINDINGS:**

Public Law Board No. 5905, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On November 12, 1999, Carrier notified Claimant to report for an investigation on November 19, 1999, concerning "the charge that you allegedly violated Roadway Worker Protection Rules 17.2 and 17.3.2 when on November 8, 1999, at approximately 9:20 a.m., you left your assigned work location at the City Track, leaving a contractor unprotected." The hearing was held as scheduled. On November 24, 1999, Carrier advised Claimant that he had been found guilty of the charge and had been dismissed from service.

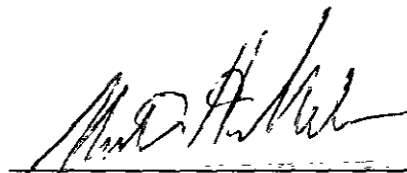

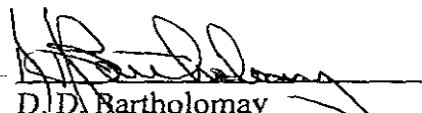
The instant claim arose out of the underlying incident that gave rise to the reasonable

cause drug test which resulted in Claimant's dismissal that we considered in Case No. 13, Award No. 12. In Case No. 13, Award No. 12, we found that Carrier proved by substantial evidence that Claimant violated Rule 1.16 by reporting for duty with cocaine in his system and that dismissal was not arbitrary, capricious or excessive. Accordingly, we denied the claim.

In view of our decision in Case No. 13, Award No. 12, there is no remedy that this Board could award Claimant in the instant case, even if we were to find merit in his claim. Accordingly, we do not reach the merits of the claim, but instead dismiss the claim as moot.

**AWARD**

Claim dismissed.

  
Martin H. Malin, Chairman  
D. M. Gevaudan  
Carrier Member  
D. D. Bartholomay  
Employee Member

Dated at Chicago, Illinois, December 28, 2000.