

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

)
) Case No. 21
)
) Award No. 18
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
A. L. Reichle, Carrier Member

Hearing Date: August 31, 2001

STATEMENT OF CLAIM:

1. The dismissal of Crane Operator D. J. Connell for his alleged violation of Maintenance of Way Safety Rule 1.16 was without just and sufficient cause and based on an unproven charge and in violation of the Agreement (System File GC-15-01/UM-22-01).
2. As a result of the violation described in Part (1) above, D. J. Connell shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

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 July 9, 2001, Carrier notified Claimant to report for an investigation on July 17, 2001, concerning his alleged violation of Rule 1.16 as indicated by a positive drug test on July 5, 2001. The hearing was postponed to and held on July 20, 2001. On July 24, 2001, Carrier advised Claimant that he had been found guilty of the charge and had been dismissed from service.

The Board has reviewed the record carefully. The record reveals that Claimant was clearly guilty of the infraction with which he was charged. Claimant was given a random CDL

drug test on July 5, 2001. Claimant tested positive for marijuana and Claimant and the Organization do not challenge the test results. Carrier clearly proved the charge by substantial evidence.

However, considering the particular circumstances of this case, and without setting a precedent for future cases, the Board has determined that Claimant should be given one last opportunity to demonstrate that he can be a productive and sober employee, who complies with all of Carrier's rules. Accordingly, we shall sustain the claim but only to the following extent. We shall order Carrier to reinstate Claimant with seniority unimpaired but without compensation for time held out of service. Reinstatement shall be on a last chance basis. Any subsequent rule violation or other act of misfeasance or malfeasance, no matter how minor, shall be cause for Claimant's permanent dismissal.

Reinstatement shall also be subject to the following conditions:

- Claimant shall pass a return to work physical exam, including drug and alcohol screens.
- Claimant shall contact Carrier's EAP Program Administrator within ten working days of being notified of his conditional reinstatement. Claimant shall comply with any treatment and after care program and any other terms and conditions specified by the EAP.
- Claimant shall sign a medical release authorizing Carrier to obtain records documenting Claimant's compliance.
- Claimant shall remain drug free. Claimant shall be subject to random, unannounced drug tests for a period of two years following his return to work.
- Failure to comply with any of these conditions shall be cause for Claimant's permanent dismissal.

Claimant is admonished that this award does not diminish the seriousness of his violation and is further admonished of the need to correct his conduct immediately. Claimant shall have this one last chance but if he squanders it, Carrier will have the right to terminate his employment permanently.

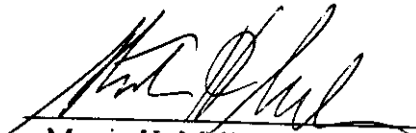
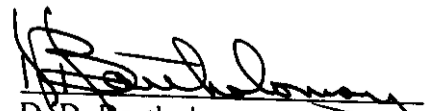
AWARD

Claim sustained in accordance with the Findings.

ORDER

The Board, having determined that an award favorable to Claimant be made, hereby

orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto


Martin H. Malin, Chairman
A. L. Reichle,
Carrier Member
D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, September 17, 2001.