

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
and	)	Case No. 2
	)	
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY	)	Award No. 2

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Organization Member
J. F. Ingham, Carrier Member

Hearing Date: October 10, 1996

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Garage Serviceman Richard J. Delgado for his alleged violation of Rule G on September 1, 1995 and his alleged violation of a September 17, 1993 conditional reinstatement was without just and sufficient cause (System File SAC-16-95/UM-20-95).
2. Claimant Richard J. Delgado shall now be allowed the remedy prescribed in Rule 57(c).

FINDINGS:

Public Law Board No. 5905, upon the whole record and all of 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.

In March 1993 Claimant was dismissed from service for violating Rule G, having tested positive for THC. On September 17, 1993, Carrier agreed to reinstate Claimant conditioned, among other things, on his contacting Carrier's Employee Assistance Program Administrator, undertaking and

completing recommended treatment and aftercare programs, and remaining drug and alcohol free while subject to duty. On January 6, 1994, the EAPA approved Claimant to return to work. However, on January 5, 1994, a hearing was held to investigate charges that Claimant had filed fraudulent claims for unemployment benefits. On January 13, 1994, Claimant was found guilty of the charge and dismissed from service. Claimant's claim was submitted to Public Law Board No. 5600 which sustained the claim and ordered Claimant reinstated. On September 1, 1995, Claimant was given a return-to-duty physical exam which included a drug screen. Claimant tested positive for THC.

On September 11, 1995, Carrier notified Claimant to report for an investigation on September 14, 1995. The notice charged Claimant with violating Rule G and the terms of his conditional reinstatement. The hearing was postponed to and held on September 27, 1995. On October 5, 1995, Carrier advised Claimant that he had been found guilty of the charges and was dismissed from service.

The Organization contends that Claimant was prevented from completing the EAP program because of his dismissal for allegedly filing fraudulent unemployment benefits claims. The Organization maintains that, because that dismissal was held to have violated the Agreement, Claimant should not be held responsible for his positive drug test on September 1, 1995. Carrier argues that Claimant was responsible for his positive drug test and that the result violated Rule G and the conditions of his prior conditional reinstatement.

The Board has reviewed the record carefully. The Organization does not contest the drug test. Rather, it argues that Claimant was prevented from completing the rehabilitation program by his prior dismissal which was overturned by PLB 5600. We do not agree. At the investigation, Claimant explained his failure to complete the rehabilitation program:

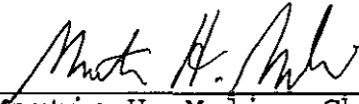
I was in the process of getting, making conditions that was stipulated in the letter of September 17, 1993 when I was terminated again by the Carrier. So I didn't finish meeting my conditions with the agreement because I was terminated again. What would be the reason of meeting conditions if I'm no longer an employee. It would be irrelevant on my part.

Of course, the reason for continuing with the rehabilitation program would be to deal with his substance abuse problem. Claimant chose, on his own accord, not to continue with the program. Moreover, if, upon being recalled pursuant to PLB 5600's award, Claimant believed that he was not ready to return to work because he had not

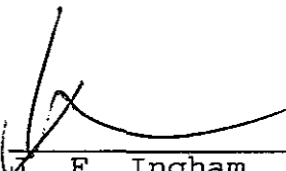
continued with the rehabilitation program, it was incumbent on him to advise Carrier. Instead, he proceeded to take the return-to-duty physical and tested positive for a controlled substance. We see no reason to disturb his dismissal.

AWARD

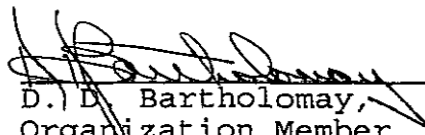
Claim denied.



Martin H. Malin, Chairman



J. F. Ingham,
Carrier Member



D. D. Bartholomay,
Organization Member

Dated at Chicago, Illinois, February 7, 1997.