

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

)
) Case No. 35
)
) Award No. 30
)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

J. F. Ingham, Carrier Member

Hearing Date: February 15, 2006

STATEMENT OF CLAIM:

1. The discharge of Water Service Mechanic D. E. Moore for alleged violation of Maintenance of Way Safety Rule 1.16; and of Subpart B of 49 CFR 382.213, 382.215 and Subpart E, 382.501, for allegedly testing positive for cocaine on August 9, 2004, was without just and sufficient cause, based on an unproven charge and excessive punishment.
2. As a consequence of the violation referred to in Part (1) above, Water Service Mechanic D. E. Moore shall now be reinstated to service with seniority and all other rights unimpaired, compensated for all wage loss suffered and this matter shall be removed from his personal record.

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 August 18, 2004, Carrier directed Claimant to report for an investigation on August 24, 2004, concerning his alleged violation of Maintenance of Way Safety Rule 1.16, Subpart B of 49 CFR 382.213, 382.215 and Subpart E of 49 CFR 382.501, by allegedly testing positive for cocaine on August 9, 2004. The hearing was held as scheduled. On August 25, 2004, Carrier notified Claimant that he had been found guilty of the charge and dismissed from service.

The record reveals that on August 9, 2004, Claimant was given an FRA-required random drug test. There were no irregularities in sample collection, chain of custody of the sample or handling by the testing laboratory. The test was positive for cocaine. Claimant admitted his

guilt.

At the hearing Claimant stated that he had made a mistake and that he had enrolled in a rehabilitation program. Claimant had no prior positive drug screens. Under the peculiar circumstances presented, and without setting a precedent for other cases, the Board finds that Claimant should be given a final chance to demonstrate that he can be a productive and sober employee. The Board shall order that Claimant be reinstated on a last chance basis, without compensation for time held out of service, and subject to the following conditions:

1. Within such reasonable deadline as Carrier may establish, Claimant shall contact Carrier's Employee Assistance Program for an evaluation.
2. Claimant shall comply with all terms and conditions specified by the EAP, including aftercare programs that the EAP recommends and documented attendance at AA/NA meetings.
3. Claimant shall sign a medical release authorizing the EAP to disclose Claimant's records to Carrier so that Carrier may verify Claimant's compliance.
4. Claimant must be approved by the EAP and Carrier's Director of Medical Services to return to work and must pass a return to work physical, including a drug screen, prior to being reinstated to service.
5. Claimant shall be subject to random, unannounced testing for drugs and alcohol for five years following his return to service. Carrier may use hair analysis in place of or in addition to urine analysis.
6. Following return to service, no later than the tenth day of each month, Claimant shall regularly furnish Carrier with acceptable documentation of compliance with any aftercare program that the EAP recommends, including attendance at AA/NA meetings and counseling sessions.
7. If required by Carrier to do so, Claimant shall successfully complete a rules examination within thirty days of returning to service.
8. Failure to comply with any requirement of the EAP or testing positive for any drug or alcohol or a further violation of Rule 1.16 at any time within five years following his return to service shall result in Claimant reverting to a dismissed status and there shall be no need for further hearing.

AWARD

PLB 5905
Awd 30

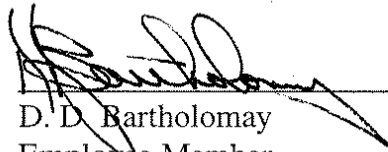
Claim sustained in accordance with the Findings.

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

J.F. Ingham
Carrier Member

D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, March 1, 2006.