

PUBLIC LAW BOARD NO. 6089

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 10
UNION PACIFIC RAILROAD COMPANY) Award No. 10

Hearing Date: April 6, 1998

Claim of the System Committee of the Brotherhood that:

- FINDINGS:**

On June 12, 1996, Carrier notified Claimant to report for an investigation on June 18, 1996. The notice charged Claimant with several rule violations as a result of a positive drug test administered as part of a return to duty physical on May 14, 1996. The hearing was postponed to and held on June 26, 1996. On July 12, 1996, Carrier advised Claimant that he had been found guilty of the charge and dismissed from service.

The Organization contends that Carrier violated Claimant's

due process rights because the charge was imprecise. Specifically, the Organization attacks the notice for failing to specify what drug Claimant was alleged to have had in his system.

On the merits, the Organization argues that Carrier failed to prove the charge by substantial evidence. The Organization contends that the lab report, as interpreted in the testimony of Carrier's Manager Drug Testing, reflects that the test was performed on May 17, 1996, but reports a positive result certified by the lab scientist on May 16, 1996. The Organization urges that such an inconsistency renders the lab report unreliable.

Carrier argues that the notice of charge was sufficiently specific to enable Claimant to prepare a defense. On the merits, Carrier contends that the lab report was consistent and proved Claimant's guilty by substantial evidence. Carrier maintains that May 17, 1996, was the date on which the results were reported, but that May 16, 1996, was the date on which the certifying scientist certified the results. Carrier urges that dismissal was appropriate in this case because Claimant had been dismissed previously and had been reinstated on a leniency basis, conditioned on his remaining drug free.

We consider the procedural issue first. Based on our review of the charge, we find no violation of the Agreement. It is true that the charge did not specify that Claimant had allegedly tested positive for marijuana. However, it did refer specifically to the test date and that the test was part of a return to work physical. This information was sufficient to appraise Claimant of the specific incident which formed the basis for the charge and to enable him to prepare a defense. Indeed, Claimant came to the hearing very well prepared with his defense, which included results of a test Claimant had taken at his own initiative and expense the prior month.

We now turn to the merits of the dispute. Based on our review of the record, we find that Carrier proved the violations by substantial evidence. The documents from the lab, on their face, are not inconsistent. They reflect that the sample was collected on May 14, 1996, was received by the lab on May 15, 1996, that the lab scientist certified the results on May 16, 1996, and that the results were reported to Carrier's MRO on May 17, 1996. The documents reflect no break in the chain of custody of Claimant's urine specimen.

The Organization's attack on the reliability of the lab report stems from the Manager Drug Testing's testimony during cross examination: "The final report is on page 4 of EXHIBIT E. The sample was tested and confirmed on the 17th of May, 1996, at 6:33 p.m."

It is apparent from the record that the Manager Drug Testing misspoke. The document to which he referred shows May 17, 1996 at 6:33 p.m. as the date and time of the report, not the date and time that the sample was tested. Furthermore, the manager subsequently corrected his testimony:

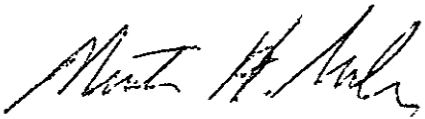
- Q: Doesn't he [the certifying scientist] testify that the sample was tested on the 16th?
- A: The sample was probably tested on the 15th. The final report of that sample was issued on May 17th, 1996 at 6:33 p.m.
- Q: Well you just testified that the sample was tested on the 17th. But yet . . .
- A: Well, the final report was done then. That's when he released it to the MRO.

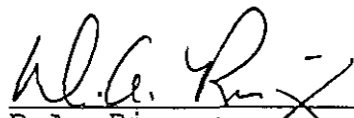
Furthermore, we find no reason in the record to regard the Manager Drug Testing's testimony on cross examination that the sample was tested on May 17 as anything other than a misstatement on his part. Therefore, we find no reason to believe that the test and report, which complied with all required safeguards, were not reliable. We conclude that Carrier proved the charge by substantial evidence.

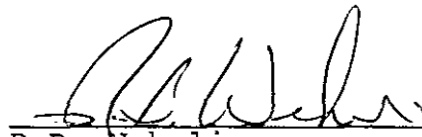
There is no dispute that in 1992, following his dismissal, Claimant agreed to a leniency reinstatement, conditioned on, among other things, his remaining drug free. Under these circumstances, we cannot say that his dismissal was arbitrary, capricious or excessive.

AWARD

Claim denied.


 Martin H. Malin, Chairman


 D.A. Ring,
 Carrier Member


 R.B. Wehrli
 Employee Member

Dated at Chicago, Illinois, September 28, 1998.