

PUBLIC LAW BOARD NO. 6221

NEW JERSEY TRANSIT RAIL OPERATIONS, INC.	:	
"Carrier"	:	Case No. 6
	:	
vs.	:	
	:	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	:	Award No. 6
"Organization"	:	
	:	
	:	(R. Cannon)

IN CONNECTION WITH:

On June 11, 1998 the office of the Division Engineer, Mr. Jon Kristinsson, was notified that on June 9, 1998 while performing your assigned duties, you drank from Assistant Foreman Gary Devine's water container and informed him that because you have AIDS, he has it now. You told him that he should see a PA doctor and pick out a new suit (to be buried in). On June 10, 1998 you told Track Foreman John Duffy to pick out a suit and a coffin to be buried in because you had been drinking out of his bottle without him knowing it. You said that you did not get David Herbert, but you said that the whole gang was as good as dead. You also stated to Foreman Duffy that you had cut your finger earlier that day and that you had dripped blood into the gang's water cooler. You stated that you were serious about it. Previously at a food establishment called the Chow Wagon in Cherry Hill, NJ you were questioned by Mr. Devine about bleeding scabs on your arms. You responded by stating to him that you had AIDS. Also, on a previous occasion you stated to Track Supervisor Rick Browner that you had Hepatitis B. By your own statements you have AIDS and Hepatitis B, both communicable, potentially fatal diseases. With this knowledge you deliberately drank from other employees glasses/bottles and allowed your blood to mix with the gang's drinking water with the stated purpose of causing harm to the individuals.

Therefore, in connection with this matter you are charged with violation of: hostility, creating an unsafe and unhealthy work place, willful disregard of the well-being of your coworkers, conduct unbecoming an employee and TRANSIT's Engineering Department Safety Rules D, E and General Rule 27.

OPINION OF THE BOARD

Carrier contends that the facts of this matter, as set forth above, provide justification for Claimant's dismissal. The Organization asserts that Claimant's statements amounted to "horseplay" that was not meant to be serious, nor taken seriously by other employees. The Organization therefore seeks the Grievant's return to service and asks that his seniority, vacation, back wages and benefits be reinstated unimpaired.

The Board has determined that the claim must be denied.

It is important to note at the outset that Claimant was not terminated for being HIV positive or having AIDS. Rather, he was terminated for threats which he made to other employees. It is also important to note that there was credible testimony establishing that Claimant made statements concerning having Hepatitis B and that Claimant acknowledges making the statements attributable to him concerning AIDS and his infecting fellow employees with AIDS. While Claimant contends that he was just kidding, the record evidence reveals that there was much confusion concerning whether Claimant was or was not HIV positive, and whether Claimant was or was not serious concerning the statements attributed to him. Clearly, Claimant's statements had an impact upon his fellow employees, at least some of whom were fearful at the time about their physical condition. These employees were required to undergo HIV testing and submit to a series of Hepatitis B shots. While some employees may now, in hindsight, not consider Claimant's threats to be serious, it is apparent that at the time

Claimant made them at the very least uncertainty was created. Claimant's statements also had clear impact upon Carrier, who at its expense arranged for the testing and shots.

Moreover, this is not a situation where Claimant has an exemplary service record. Thus, Claimant cannot use his record as a basis upon which to mitigate the impact of his misconduct in 1998.

Accordingly, the Panel cannot find that Carrier acted arbitrarily or capriciously in dismissing Claimant based upon the threatening statements he made in 1998. The Panel therefore need not, and does not, consider Carrier's argument that Claimant also constructively resigned after his termination by accessing a benefit plan account which is available to employees only after they sever their employment with Carrier.

AWARD

Claim denied.



P. Charles  
Carrier Member



G. J. Barbati  
Organization Member



S. E. Buchheit  
Neutral Member