

PUBLIC LAW BOARD NO. 6237

**AWARD NO. 1
CASE NO. 1**

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees

vs.

Union Pacific Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings.

DATE: December 23, 1999

STATEMENT OF CLAIM:

"Claim on behalf of the System Committee of the Brotherhood that:

1. The dismissal of Track Patrol Foreman R. D. Busch for alleged violation of Union Pacific Rule 1.5, effective April 10, 1994, and Union Pacific Railroad Drug and Alcohol Policy and Procedures effective March 1, 1997 was without just and sufficient cause and in violation of the Agreement. (System File R-9848-106/1153689)
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be returned to the Carrier's service with seniority and all other rights unimpaired, he shall have his record cleared of the charges leveled against him and he shall be returned to service under the provisions of Article IV - Union Pacific Drug and Alcohol Policy and Procedures effective March 1, 1997."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute; and that the parties were given due notice of the hearing.

Claimant was dismissed after testing positive for marijuana usage in connection with a return to work physical examination following a lengthy absence.

Rule 1.5 of the Uniform Code of Operating Rules provides, in pertinent part, that "Employees must not have any prohibited substances in their bodily fluids when reporting for duty, while on duty, or while on company property." Reporting to a physician's office for the purposes of completing a return to work physical does not constitute "... reporting for duty, while on duty, or while on company property." In the opinion of this Board, Claimant was not in violation of Rule 1.5.

The remaining question that must be answered is whether an employee who tests positive for illegal drugs during a return to work medical examination is subject to discipline? The relevant portions of Carrier's Drug and Alcohol Policy are found on pages 2 and 7. On page 2, the policy provides that "... the illegal use, possession, manufacture, distribution, dispensation or transportation of any drug or controlled substance is prohibited at any time, either on duty or off duty." The policy also provides the following on page 7: "Any employee providing a urine sample which tests positive for illegal or unauthorized drugs during a required physical examination may, upon the recommendation of the office of the Medical Director, be medically disqualified from service without pay. If the test results establish that the employee has failed to follow previous instructions to remain drug free, he/she may be subject to discipline."


Reading page 2 and 7 of Carrier's policy together, it reasonably could be argued that Claimant violated the prohibitions set forth on page 2 of the policy and the Medical Director declined to medically disqualify the Claimant. Claimant, therefore, would be subject to discipline and would fall under the provisions of Award No. 5 of Public Law Board 6089. The Organization, however, has pointed out, without refutation by the Carrier, that, without exception, employees who have tested positive during return to work medical examinations have been medically disqualified and discipline has not been issued.

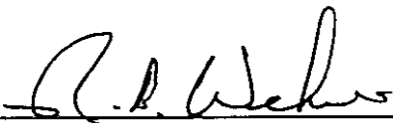
It appears to this Board that but for the language of Award No. 5, Claimant would have been medically disqualified and discipline would not have been issued. To deny Claimant the opportunity to take advantage of a program that will allow him to reclaim his worklife appears to this Board to be an arbitrary decision by the Carrier. This is especially so since the Carrier has uniformly offered this opportunity to employees who have tested positive for illegal drugs during their return to work medical examinations. Claimant, therefore, will be restored to the status he held immediately prior to the investigation. That is, he is medically disqualified and will be offered the same programs available to other employees who test positive for illegal drugs during a return to work medical examination.

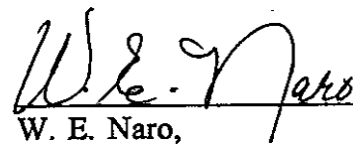
Claimant should understand that Award No. 5 of Public Law Board 6089 will continue to apply to him. Claimant's representatives are also strongly encouraged to personally meet with Claimant to impress upon him the importance of strict compliance with Carrier rules and policies. This Award is based upon the unique circumstances involved and is not to be referred to as precedent by any party.

AWARD:

Claim sustained in accordance with the Findings.


Gerald E. Wallin, Chairman
and Neutral Member


R. B. Wehrli,
Organization Member


W. E. Naro,
Carrier Member