

PUBLIC LAW BOARD NO. 6237

**AWARD NO. 2
CASE NO. 2**

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

vs.

Union Pacific Railroad Company

ARBITRATOR: **Gerald E. Wallin**

DECISION: **Claim denied.**

DATE: **August 19, 2000**

STATEMENT OF CLAIM:

- (1) The dismissal of Sectionman S. L. Wilson was in violation of Agreement and Carrier policy past practices and lacked discretion. (Organization File W-9948-153; Carrier File 1184847)
- (2) The discipline, which is clearly excessive in nature, must be canceled and Claimant must be paid for all time unjustly withheld from service and treated like others by allowing him to return to service with seniority and all other contractual rights unimpaired upon his receipt of clearance from the Carrier's Employee Assistance Program."

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 from all service following a drug screen showing him to have tested positive for metabolites of marijuana. The test was administered in connection with an Engineering Physical examination. The positive test was his second within a 10-year period. Under Carrier's drug and alcohol policy, a second infraction within that timeframe calls for dismissal. The record establishes that the policy became effective March 1, 1997 and that all employees, including Claimant, had been informed of the provisions. Claimant did not dispute the test results nor did he disavow knowledge of the policy provisions.

Our review of the investigation record and the handling of the Claim on the property does not reveal any procedural improprieties. It does not appear that Carrier violated any Agreement

provisions in removing Claimant from service prior to the investigation hearing nor in its administration of the drug and alcohol policy. Although there was an assertion of a past practice at variance with the terms of the policy, the record contains no sufficient proof of such a practice since the 1997 effective date of the policy. Nor does it appear that Claimant submitted the test sample under circumstances that would have immunized him from disciplinary action.

In light of all of the relevant circumstances, we find no proper basis for disturbing Carrier's disciplinary action.

AWARD: The Claim is denied.


Gerald E. Wallin, Chairman