

AWARD NO. 11
Case No. 11

Organization File No.
Carrier File No. K0100-1414

PUBLIC LAW BOARD NO. 6355

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS
)
TO)
)
DISPUTE) KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of Engineer T. D. Turner for reinstatement and pay for all time lost with seniority and all rights restored unimpaired.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated July 31, 2000, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

When Claimant came on duty at 11:59 pm on September 20, 1999, he was required to submit to random breath testing pursuant to regulations of the Federal Railroad Administration. When tested at 12:10 am, Claimant's test showed he had a blood-alcohol ratio of 0.029. Upon being retested at 12:27 am, Claimant's blood-alcohol ratio was 0.032. Claimant was thereupon removed from service pending investigation. At his investigation, Claimant testified he had consumed a glass of wine at 6:00 pm. Following the investigation, Claimant was dismissed from service. After being out of service for six months, the Carrier offered Claimant a leniency reinstatement, which he says

he rejected because it imposed restrictions and conditions with which he was uncomfortable. According to Claimant, these conditions would have afforded him no right of appeal if he were to test positive again.

A review of the transcript of the investigation reveals that Claimant was tested in accordance with the FRA regulations. Not only was he in violation of the Carrier's zero-tolerance policy, but he was in violation of the 0.02 blood-alcohol standard set by the FRA. As his blood-alcohol ratio was rising between the two tests, it is not likely that Claimant had not drunk any alcohol in six hours. It is more likely that the alcohol was still be absorbed into his system, indicating recent consumption. Clearly, then, the charge against Claimant was proven by substantial evidence.

Although the Organization argues Claimant should have been afforded an opportunity to take a urine test to confirm the breath test findings, it has cited no authority for such a test. The federal regulations provide only for a second breath test as a confirmation for a positive first test. Furthermore, the Carrier was not under an obligation to provide information in advance of the investigation as requested by the Organization. The parties' discipline rule does not provide for pre-investigation discovery.

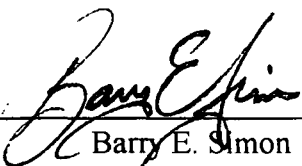
While we find that the charge against Claimant was proven, the Board is of the opinion that permanent dismissal is too severe for what is apparently Claimant's first offense. Accordingly, we will direct that Claimant be reinstated on a last-chance basis, without compensation for time lost, and subject to the following conditions:

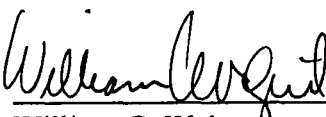
1. Prior to his return to service, Claimant must successfully pass a return-to-service physical examination, which will include a drug screen and/or breath alcohol test, and he must meet any other medical requirements before

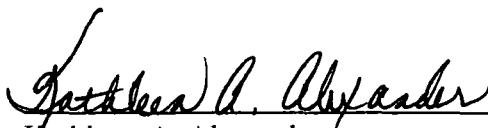
performing service. Claimant must also successfully pass any required rules examinations.

2. Claimant must meet with the Carrier's Employee Assistance Counselor for an evaluation. Claimant must then participate in any program, inpatient and/or after-care, prescribed by the Counselor, for a period not to exceed two years following his return to service. Claimant must submit any requested documentation to the Counselor to show his compliance with this requirement.
3. For five years following his return to service, Claimant shall be subject to random drug and/or alcohol testing without advance notice. Any test showing the presence of any amount of alcohol or prohibited drug, or any refusal to submit to such testing, shall be considered a failure to comply with this requirement.
4. Any failure to comply with these conditions, if proven in an investigation, shall be sufficient grounds for Claimant's permanent dismissal. Claimant shall retain all rights of appeal afforded him in the Agreement and the Railway Labor Act.

AWARD: Claim sustained in accordance with above Findings.


Barry E. Simon
Chairman and Neutral Member

 12-19-00
William C. Walpert
Employee Member


Kathleen A. Alexander
Carrier Member 12-19-00

Dated: Dec 1, 2000
Arlington Heights, Illinois