

PUBLIC LAW BOARD NO. 6935

PARTIES)	BROTHERHOOD OF MAINTENANCE OF WAY
)	EMPLOYEES DIVISION - IBT RAIL CONFERENCE
)	
TO)	
)	
DISPUTE)	THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed upon Mr. J. Randle, by letter dated January 25, 2020, for alleged violation of GCOR Rule 1.5 - Drugs and Alcohol and The Kansas City Southern Railway Company’s Drug and Alcohol Free Workplace Policy was severe, harsh and an abuse of Carrier discretion (System File KCS701SN20D/2019-0901 KCS).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Randle shall now:

‘ . . . be returned to work on his position of Machine Operator, and the claimant shall be made whole for all financial losses as a result of the violation, including compensation for the straight time for each regular workday lost and holiday pay for each holiday lost. This is to be paid at the rate of position assigned to the claimant at the time of removal of service. This amount is not to be reduced by earnings for alternate employment, obtained by the claimant while wrongfully removed from service. This should also include any general lump sum payment or retroactive general wage increase provided in any applicable agreement that becomes effective while claimant was out of service. Any overtime needs to be included for the lost overtime opportunities for any position the claimant could have held during the time he was removed from service, or on overtime paid to any junior employee for work the claimant could have bid and performed had he not been removed from service. Any health, dental and vision care insurance premiums, deductibles and copays that he would not have paid had he not been unjustly removed from service.’ (Employees’ Exhibit ‘A-2’).”

FINDINGS:

Upon consideration of the entire record and all of the evidence, the Board finds 1) the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended; 2) PLB 6935 is duly constituted by Agreement and has jurisdiction over this dispute; and 3) the parties received notice of the hearing.

In December 2019 Claimant served as Machine Operator on Gang 745 stationed out of Sulphur Springs, Texas. He has nineteen (19) years of service and a record clear of any infractions during the recent three (3) years.

On December 15, 2019, Claimant attended a ball game at his son's residence. He ate "a couple" gummy bears without knowing they contained tetrahydrocannabinol ("THC").

On December 17, 2019, Claimant was subjected to a random drug and alcohol test required by Federal Railroad Administration ("FRA") regulations at 49 C.F.R. Part 219. The Carrier received notice on December 26, 2019, that Claimant scored a positive test for THC metabolites. That is, "a couple" gummy bears eaten by Claimant contained an amount of THC that exceeded the threshold for registering a positive test. Based on the positive test, Claimant was removed from service.

The parties agreed to January 15, 2020, for a formal investigative hearing in connection with Claimant's FRA drug and alcohol test and whether he violated GCOR 1.5 - Drugs and Alcohol and the Carrier's Drug and Alcohol Free Workplace Policy. Following the hearing, the Carrier assessed discipline of dismissal to Claimant on January 25, 2020 for the rule and policy violations.

The Organization appealed Claimant's dismissal noting the Carrier preconceived Claimant's guilt when it removed him from service, failed to meet its burden of proof and assessed unjustified, harsh and overly excessive discipline. This claim was handled in the usual manner, up to and including conference held on June 17, 2020, and now is properly before the Board.

Undisputed is that Claimant scored a positive drug test for THC metabolites which violates GCOR 1.5 - Drugs and Alcohol; this rule violation is a dismissal infraction under the KCS' Discipline Policy. The Organization maintains that dismissal is harsh and too severe; it notes that Claimant apologized for consuming candy which, unknown to him, contained THC. The BMW recognizes that substance abuse is a major health problem and notes that the Carrier's Drug and Alcohol Free Workplace Policy acknowledges "alcohol and drug abuse and addiction are treatable illnesses" and "early intervention and support improve the success of rehabilitation."

The Board finds that the Carrier did not act with preconceived guilt of Claimant when it removed him from service based on his positive drug test. Removal from service occurs pending formal investigation of a possible major rule violation which arises from a Federally sanctioned drug and alcohol test for a safety-sensitive position. Claimant received a fair and impartial hearing that produced substantial evidence establishing he violated GCOR 1.5 and the Carrier's Drug and Alcohol Free Workplace Policy.

This positive drug test is Claimant's second offense. His initial dismissal major rule violation occurred in 2010; the Carrier exercised leniency and reinstated Claimant to service. Leniency is, generally, extended on a one-time basis; Claimant is before the Board having exhausted leniency and seeking reinstatement with a tepid explanation. Claimant was aware of the consequences - - dismissal - - for a failed drug test. Safety is paramount in the railroad industry and Claimant's reporting for duty in an impaired condition affects the safety of co-workers as well as himself. The

Board finds no exigent circumstances sufficient to mitigate Claimant's second drug offense, therefore, this claim will be denied.

AWARD: Claim denied.

Patrick Halter /s/
Patrick Halter
Chair - Neutral Member


John Schlismann
Employee Member


Louis Fernandez
Carrier Member

Date: *November 15, 2021*