

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad  
(Former Missouri Pacific Railroad)

Case No. 81  
Award No. 81

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. S. Holland, by letter dated April 28, 2016, for the alleged violation of General Code of Operating Rules (GCOR) 1.5: Drugs and Alcohol and GCOR 1.6: Conduct - Insubordinate was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP705SN16D/1663032 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Holland shall be allowed to return to work with all vacation and seniority rights unimpaired, the charges and discipline be removed from his personal record and he be compensated for any lost time including overtime, per diem and mileage and that he be reimbursed for any additional expenses incurred that would have been covered by the Carrier.”

FINDINGS:

Public Law Board No. 7633, upon the whole record and all the evidence, finds the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction of the dispute herein; the parties were given due notice of hearing before this Board and they participated therein.

The Claimant was disciplined pursuant to a Notice of Investigation dated March 14, 2016, Investigation held April 8, 2016, “to develop the facts and determine your responsibility, if any, in connection with your alleged violation of the Union Pacific Railroad Drug and Alcohol

Policy as described: Allegedly refused a UP Reasonable Suspicion test. The test was ordered in accordance with Union Pacific Railroad (UPRR) Drug and Alcohol Policy at 08:25 AM on March 08, 2016 at 1021 Melrose St, Memphis, TN while you were working as a Systems Bridgeman. This is a possible violation of the following rule(s) and/or policy: 1.5 : Drugs and Alcohol; 1.6 : Conduct – Insubordinate. If proven, this would be in violation of the UPRR Drug and Alcohol Policy and General Code of Operating Rules (Rule 1.5). Please be advised that if you are found to be in violation of this alleged charge, the assessment under the MAPS Policy may be permanent dismissal.”

On April 28, 2016 the Carrier issued a Notice of Dismissal stating in pertinent part: “The Union Pacific Railroad (UPRR) Manager of Drug and Alcohol Testing has reported the following: Refused a UP Reasonable Suspicion test. The test was ordered in accordance with Union Pacific Railroad (UPRR) Drug and Alcohol Policy at 08:25 AM on March 08, 2016 at 1021 Melrose St, Memphis, TN while you were working as a System Bridgeman. Your positive test result indicates a violation of the UPRR Drug and Alcohol Policy, General Code of Operating Rules (Rule 1.5). Further, it is a violation of a Waiver Agreement. The Agreement states that you must avoid any violation of any company rule with reference to drugs and alcohol. It also states: *Failure to comply with these instructions and/or the terms and conditions of the Waiver Agreement during the 12-month probationary period will result in your immediate return to dismissed status without the benefit of a formal hearing, under your collective bargaining agreement.*”

The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties’ respective positions, whether or not specifically addressed herein.

The Organization’s procedural arguments are unpersuasive.

It is undisputed that on the date in question Claimant was approximately 45-minutes-to-an-hour late to work, and had red eyes and a sniffly nose upon arriving at work. Carrier’s

Manager Bridge Maintenance Munoz observed this and questioned Claimant. Munoz testified that Claimant appeared confused, and gave answers which Munoz knew were inaccurate. Munoz consulted with another Manager Bridge Maintenance, and with the Director of Drug and Alcohol Testing. All three agreed that Claimant should undergo Reasonable Suspicion Drug and Alcohol Testing.

Claimant submitted to a breath alcohol test, but at the same time and place refused to submit to a urine test. Claimant admitted that he refused to take the urine test. He testified that the refusal was because he had recently returned from FMLA leave. The Carrier found this explanation unpersuasive, as does the Board. Also, the Board notes Claimant testified that within minutes after refusing to give a urine sample, he went to the bathroom, in the same facility.

The Carrier had reasonable grounds to direct Claimant to undergo Reasonable Suspicion Drug and Alcohol Testing. Claimant admitted he was approximately 45 minutes late to work, which he attributed to oversleeping. Claimant admitted he had red eyes and a sniffly nose, which he attributed to allergies. Claimant's attributions do not negate that Munoz observed objectively reasonable factors which justified Reasonable Suspicion Drug and Alcohol Testing. Neither is same negated by Claimant's assertion (which the Board finds unpersuasive) that Munoz mistook Claimant's family issues and recent return from FMLA for drug/alcohol symptoms. Claimant's assertion that Munoz subjected him to this Reasonable Suspicion Drug and Alcohol Testing as retaliation is unpersuasive.

There is substantial evidence in the record to uphold the Carrier's discipline determination. The Organization's defenses are not persuasive. The discipline assessed by the Carrier was not arbitrary, capricious, or an abuse of discretion under the facts and circumstances of this record, and will therefore not be disturbed by this Board.

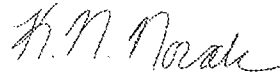
AWARD:

Claim denied.




---

Robert Grey  
Neutral Member  
Dated: May 11, 2018



---

Katheirne Novak  
Carrier Member



---

Andrew Mulford  
Labor Member