

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company [former
Southern Pacific Transportation Company (Western Lines)]

Case No: 167
Award No: 167

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. T. Smith, by letter dated August 13, 2018, in connection with allegations that he violated Rule 1.5 Drugs and Alcohol was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File T-1845S-902/1712492 SPW).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Smith’s Level 5 Termination shall be expunged from his personal record. Claimant be immediately reinstated to service and compensated for all wages lost, straight time and overtime excluding earnings from outside employment, beginning with the day he was removed from service and ending with his reinstatement to service. Claimant be compensated for any and all losses related to the loss of fringe benefits that can result from dismissal from service, i.e., Health benefits for himself and his dependents, Dental benefits for himself and his dependents, Vision benefits for himself and his dependents, Vacation benefits, Personal Leave benefits and all other benefits not specifically enumerated herein that are collectively bargained for him as an employee of the Union Pacific Railroad and a member of the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters. Claimant to be reimbursed for all losses related to personal property that he has now which may be taken from him and his family because his income has been taken from him. Such losses can be his house, his car, his land and any other personal items that may be garnished from him for lack of income related to this dismissal.”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter. Parties to said dispute were given due notice of hearing thereon.

Claimant was employed as a Trainee assigned to Gang 7316 on June 29, 2018 when he allegedly refused an FMCSA (Federal Motor Carrier Safety Administration) Pre-Employment drug test in Elko, Nevada while participating in a scheduled physical in connection with his employment as a trainee.

As a result, the Carrier served Claimant with a Notice of Investigation dated July 12, 2018, charging him with violation of Rule 1.6: Conduct - Insubordinate and Rule 1.5: Drugs and Alcohol. The Notice advised Claimant if he is found to be in violation as alleged, the result may be dismissal and that he was being withheld from service pending results of the hearing.

On July 24, 2018, the Carrier convened a formal investigation and carried it through to conclusion. By letter dated August 13, 2018, the Carrier informed Claimant that he was found guilty of violating Rule 1.5 Drugs and Alcohol and assessed an immediate dismissal.

By letter dated October 8, 2018, the Organization presented an appeal to the Carrier and asserted that it failed to provide the Claimant with a fair and impartial hearing; failed to meet its burden of proof; and, that the discipline was arbitrary and unwarranted.

By letter dated November 19, 2018, the Carrier denied the Organization's appeal. Subsequently, the dispute was progressed in the ordinary and usual manner through the contractual on-property process and the matter now comes before this Board for final adjudication.

The Organization maintains, the Carrier failed to comply with Rule 45 and provide Claimant with various procedural rights and protections. Based on these failures, the instant charges and discipline must be overturned.

The Carrier argues they presented substantial evidence to conclude Claimant violated Rule 1.5: Drugs and Alcohol when he failed to provide a urine specimen in accordance with the requirements of a Federal Motor Carrier and Safety Administration (FMCSA) test on June 29, 2018. This failure constitutes insubordination under the terms

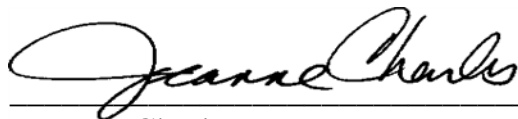
of Carrier's Drug & Alcohol Policy which is a per se violation of Rule 1.6: Conduct. Claimant received a fair and impartial hearing with no prejudicial violations. Claimant's dismissal was proper in light of the seriousness of the offenses and is consistent with the treatment of all other employees engaged in similar conduct. It remains Carrier's position there is no basis to overturn the discipline imposed.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. The Board's role is an appellate function. It must be determined whether substantial evidence to sustain a finding of guilt exists. If such evidence is in the record, the Board may not disturb the discipline imposed unless it can be said that the penalty was arbitrary, capricious or an abuse of the Carrier's discretion. A careful review of the record convinces the Board that the Carrier provided sufficient evidence to prove the charges.

The record reflects that Claimant testified during the investigation that he was aware that this was a test that needed to be completed by direct observation. His sample was not provided under these conditions. Thus, his conduct violated the requirements of a Federal Motor Carrier and Safety Administration (FMCSA) Pre-Employment drug testing procedures. His explanation that he could not provide a specimen in front of a male doctor was implausible.¹ There was no medical information submitted to explain the failure. Claimant's statement that he was uncomfortable cannot suffice under the conditions present here. Failure to meet the requirements of drug testing for a safety sensitive position is serious and significant. The Board finds no procedural violates that warrant disturbing the penalty. The handwritten note on the report from the testing facility was of no consequence.² It only referred to the time of Claimant's testing, which he acknowledged. The alteration was not of a material nature.

AWARD

Claim denied.



Jeanne Charles
Neutral Member



William Ince
Carrier Member
Dated: March 30, 2021



David M. Pascarella
Labor Member
Dated: March 30, 2021

¹ See Tr. 77-78.

² Investigation Exhibit 8.