

PUBLIC LAW BOARD NO. 7660
CASE NO. 29

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY
(former Chicago and North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s dismissal of Claimant D. Zawistowski by letter dated April 9, 2014, in connection with allegations that he violated the UPRR Drug and Alcohol Policy, GCOR Rule 1.5, Code of Federal Regulations and a Reinstatement Agreement dated January 7, 2014 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File B-1419C-105/1606426 CNW).

2. As a consequence of the violation referred to in Part 1 above, the Carrier shall now remove any mention of the discipline from Claimant D. Zawistowski’s personal record, fully reinstate him with all vacation, insurance and retirement benefits, compensation for all straight and overtime work opportunities missed as a result of the inappropriate discipline, along with any other relief contemplated by Rule 19(D).”

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.

Claimant, a 16 year employee, was working as a Track Foreman when he was subject to a follow-up drug and alcohol test on April 9, 2014. The test results show that Claimant tested positive for alcohol with a reading of .041, and a reading of .039 on a confirmation test fifteen minutes later. At the time of the test, Claimant was governed by a January 7, 2014 leniency agreement signed as a result of charges of dishonesty by Claimant with respect to his failure to conduct cold weather track inspections. That agreement contains the following provision:

2. If at any time during the eighteen (18) month probationary period, commencing with the date he returns to service, he is in violation of Rule 1.6 Conduct, any serious rule violation (Level 4 or greater) or any cardinal safety rule violation, he may revert back to the status of a dismissed employee without the benefit of a hearing under the Collective Bargaining Agreement he is working.....

As a result of the positive alcohol test, Claimant was reverted to dismissed status by letter dated April 9, 2014.

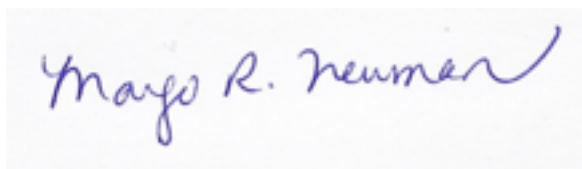
The thrust of the Carrier's position is that Claimant violated the express terms of his January 7, 2014 Leniency Reinstatement Agreement (LRA) by testing positive in violation of the Drug & Alcohol Policy, which is a serious rule violation, within his 18 month probationary period. It asserts that his reversion back to dismissed status was in compliance with the terms of the LRA, and notes that Claimant had received a prior Last Chance Agreement (LCA) on February 10, 2010, both of which required his contact with, and successful completion of, an EAP treatment program. The Organization argues that Claimant was improperly denied access to the negotiated benefit of the Prevention Program Companion Agreement for treatment of his known alcohol issue. It contends

that the LRA does not require reversion to dismissed status, noting that the language is permissive, and stresses the rehabilitative purpose of discipline.

On the basis of the entire record, the Board concludes that the Carrier did not violate the Agreement by reverting Claimant to dismissed status following the positive results of his follow-up alcohol test on April 9, 2014. A violation of the Carrier's Drug & Alcohol Policy is a serious rule infraction, encompassed within the clear language of paragraph 2 of the January 7, 2014 LRA, which occurred within the 18 month probationary period set forth therein. The Organization does not dispute the validity of the alcohol test results, but asserts that reversion to dismissal status was not required, and Claimant should have been permitted to exercise his rights under the Companion Agreement to get treatment for his alcohol problem. The record contains evidence that Claimant was given a previous LCA in February, 2010 for another dismissible rule infraction, and that he was obliged to seek help from EAP in order to return to service under both the LCA and LRA. Since Claimant and the Organization agreed to the terms of the LRA, which does not except Drug and Alcohol Policy violations from its coverage in favor of the Companion Agreement, and Claimant has been given more than one opportunity to retain his job after engaging in a dismissible offence, this claim must fail.

AWARD:

The claim is denied.



Margo R. Newman
Neutral Chairperson

Dated: Sept 24, 2016



K. N. Novak
Carrier Member



Andrew Mulford
Employee Member