

PUBLIC LAW BOARD NO. 7660
AWARD NO. 45

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES

PARTIES
TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. Carrier’s discipline (dismissal) of Mr. J. Barron for alleged violation of the Carrier’s Drug and Alcohol Policy, was without just and sufficient cause and in violation of the Agreement (System File A-1548U-001/1620523 UPS).

2. As a consequence of the violation referred to in Part 1 above, Claimant J. Barron shall be reinstated with seniority intact, allowed to participate in the Carrier’s Employee Assistance Program (EAP) and be compensated for all losses.”

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 less than 4 month employee, was issued a Notice of Investigation on December 11, 2014 on charges that he tested positive for a prohibited substance - methamphetamine - in a reasonable cause drug test on December 1, 2014. The Investigation was held on December 23, 2014, and Claimant was issued a Notice of

Discipline on January 6, 2015 permanently removing him from service for violating Rule 1.5.

The facts are not in dispute. Claimant was working as a Sectionman Truck Driver on a gang that was written up by an FRA Inspector for insufficient job briefing as a result of them working without full protection. Since this was an infraction of Cardinal Rule 136.8.2, the gang was subject to reasonable cause drug testing. Claimant tested positive for methamphetamine. There is no dispute with the accuracy of the drug test. The other gang members received Cardinal Rule coaching and a Level 4 discipline, and were set to participate in SAP in January, 2015. Claimant signed a waiver and accepted responsibility for the serious rule violation. The only issue raised by the Organization is that Claimant should have been given an opportunity to participate in EAP under the Companion Agreement, rather than Carrier relying on technical protocol concerning the fact that this was a serious rule violation and an exception to the One Time Return to Service provision of the Drug & Alcohol Policy.

On the basis of the entire record, the Board concludes that Carrier met its burden of proving that Claimant was guilty of testing positive for methamphetamine in a reasonable cause drug test conducted on December 1, 2014 as a result of an on-track safety protection violation. There is no question that working without track protection is a Level 4 critical rule violation of Rule 136.8.2. It is equally without dispute that Carrier's Drug & Alcohol Policy's One Time Return to Service Provision, Section 21.1.1, has an exception for involvement in another "major rule violation." Thus, Carrier's position that Claimant's serious rule violation bars his participation in the Companion Agreement's referral to EAP, is neither unreasonable, arbitrary nor capricious See, e.g SBA 924, Award 254 and PLB 6402, Award 133.

AWARD:

The claim is denied.

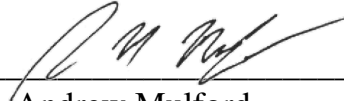
Margo R. Newman

Margo R. Newman
Neutral Chairperson

Dated: December 9, 2017



K. N. Novak
Carrier Member



Andrew Mulford
Employee Member