

PUBLIC LAW BOARD NO. 7660

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT**

and

UNION PACIFIC RAILROAD COMPANY

**Case No: 98
Award No: 98**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. F. Goodall, by letter dated February 7, 2017 for alleged violation of the UPRR Drug and Alcohol Policy and the General Code of operating Rules (Rule 1.5) was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File J-1719C-402/1682244 CNW).
2. As a consequence of the violation referred to in Part 1 above, Claimant F. Goodall shall have the discipline removed from his record and all vacation restored and shall be compensated for all time lost and be made whole for all losses until he is put back to work."

FINDINGS:

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the Brotherhood of Maintenance Employees Division – IBT (hereinafter referred to as the “Organization”) and the Union Pacific Railroad Company (hereinafter referred to as the “Carrier”). Upon the whole record, a hearing, and all evidence as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing thereon. The Claimant was ably represented by the Organization.

The Claimant, Francis Goodall, has been employed by the Carrier since May 16, 2011 and held the position of Trackman at the time of his dismissal. The Carrier alleged

that the Claimant violated Rule 1.5 of its Drug and Alcohol Policy and Rule 1.6: Conduct – Insubordination when he was unable to provide a urine specimen during a required drug test on January 10, 2017.

A hearing and investigation was conducted on January 30, 2017. On February 7, 2017, the Carrier notified the Claimant in writing that he was dismissed from service. The Organization filed its claim on February 24, 2017. The record indicates that the Carrier denied the claim and subsequent appeals by the Organization and issued its final decision on September 18, 2017 and upheld its decision to dismiss the Claimant. The Organization rejected the Carrier's decision and moved to have the matter adjudicated before this Board.

In discipline cases, as the one before the Board here, the burden of proof is upon the Carrier to prove its case with substantial evidence and, where it does establish such evidence, that the penalty imposed is not an abuse of discretion. The Board does not find any procedural errors that would nullify the need to review the merits of the dispute. Upon review of all evidence adduced during the on-property investigation, the Board here finds that the record contains substantial evidence that the Claimant violated Rule 1.5, 1.6 and other related sections of the Carrier's Drug and Alcohol Policy. The testimony and documentary evidence in the record confirms that the Claimant's inability to provide a urine specimen constitutes a refusal and insubordination.

We do not find the Organization's strenuous argument that the Claimant volunteered to take the drug test and therefore, should not be held accountable for his inability to provide a urine specimen, to be persuasive. The record indicates that in order to be eligible for a job transfer he was required to submit to a drug test in accordance with the Carrier's Drug and Alcohol Policy and the Code of Federal Motor Carriers Safety Administration. The record does indicate that the Claimant scheduled the appointment for the drug test on his own. However, we do not find that his scheduling of the drug test provides a sufficient basis to conclude that he suffered from a "shy bladder" medical condition that prevented him from supplying a urine specimen. The Carrier's policy and the applicable federal regulations require a medical conclusion that he suffered from a "shy bladder" condition.

We also find that the Organization's valiant argument that the Claimant was not provided with the required amount of drinking water to be unsupported by the record. The documentary evidence sufficiently establishes that the Claimant was provided with 40 ounces of water over a three-hour period as referenced in the applicable federal regulations.

The documentary evidence confirms that the Claimant did not have a verifiable physical or mental illness that would constitute a "shy bladder" condition. The Claimant does not have a history of "shy bladder" when providing urine specimens in previous drug tests. The Claimant's examination by a urologist on January 12, 2017 did not indicate that the Claimant had any difficulty providing a urine specimen. The urologist's findings were submitted to the Carrier's medical review office, which found no basis to conclude the Claimant, suffered from a "shy bladder" condition. Nothing in the record provides a sufficient medical diagnosis from a qualified physician that the Claimant's medication or mental condition conclusively interfered with his ability to provide the urine specimen. As such, there is no evidence that casts doubt on the determinations of the Carrier's medical review office.

There is ample arbitral precedent in the industry and on the Carrier's property that have upheld dismissals for refusing to submit to a drug test. The Carrier's Drug and Alcohol Policy specifically states that a refusal to submit to a drug test prevents the Claimant from eligibility to enter its Employee Assistance Program. It is well established in the industry that leniency is reserved to the Carrier where there is no abuse of discretion. The record does not contain any evidence that the Carrier was arbitrary in dismissing the Claimant when he did not provide a urine specimen on January 10, 2017. The Board has no basis to alter the Carrier's decision.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Carrier has provided substantial evidence that the Claimant violated the Drug and Alcohol Policy when he failed to provide a urine specimen and therefore, refused to submit to a drug test on January 10, 2017.

AWARD

Claim denied.

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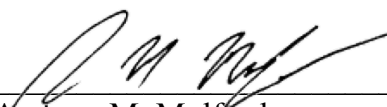
Michael Capone
Neutral Member

Dated: January 17, 2019

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Alyssa K. Borden
Carrier Member

Dated: 01/17/19

A handwritten signature in black ink, appearing to be 'Andrew M. Mulford', written over a horizontal line.

Andrew M. Mulford
Labor Member

Dated: 01/17/19