

PUBLIC LAW BOARD NO. 959

Case No. 175
Award No. 175

Parties to Dispute:

United Transportation Union (T-C)

and

Southern Railway Company

Statement of Claim:

Claim of Conductor D. L. Fowler, Georgia Division, Atlanta District, North, for restoration to service and pay for time lost, including vacation, holiday and health and welfare privileges; dismissed from service for alleged failure to comply with Company policy and instructions of Medical Director in regard to alleged failure to keep system free of prohibited drugs as shown in specimen of Conductor Fowler on January 14, 1987.

Opinion of Board:

Claimant tested positive in September, 1985, for controlled substance, and he was written the usual and customary letter by the Carrier's officer giving him two options:

1 He could present himself within 45 days and test negative and be returned to service.

2. He could participate in the DARS Program and, upon satisfactory completion of the program, return to service.

The first option carries with it the probationary provision that allows the Carrier's medical officer to direct a drug test at any time during the three years following return to service.

Claimant opted for the first choice. After his return, he was given a test in '86 which was found insufficient and disregarded. In January, 1987, he was again given a test under his provisional return to service agreement and tested positive.

Such a test automatically triggers dismissal.

Claimant, we are told, then entered the DARS Program and successfully completed it. However, that does not comply with the written agreements between the claimant and Carrier. He might have exercised the DARS option after the first positive test and been returned to service under that program. We have no authority to return him under the existing circumstances.

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Findings:

That the Agreement was not violated.


Award:

Claim denied.

Dated this 23rd day of October, 1987, at Atlanta, Ga.


J. B. Criswell, Neutral Member


D. N. Ray, Carrier Member


J. R. Barbee, Organization Member

Carrier File T-27735
Org. File ATN-1245-358-C