

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
SOO LINE RAILROAD COMPANY

Case No. 23

STATEMENT OF CLAIM:

Appeal of Claimant Richard W. Hartley's dismissal from the Carrier's service.

FINDINGS:

Claimant Hartley was employed by the Carrier as a laborer. In December of 1993, Claimant tested positive for drugs/alcohol in his system and was allowed to return to work once he executed an aftercare commitment in which he agreed to attend a program. He also agreed that any return to drug/alcohol usage which resulted in a positive drug test would constitute a breach of his commitment and his employment would be subject to termination.

On January 4, 1995, the Claimant was notified that he had tested positive for THC, a marijuana metabolite. He was removed from service and informed that he would be returned to service only if he met certain contingencies.

On January 13, 1995, the Carrier notified the Claimant to appear for a formal investigation on January 26, 1995, to determine the Claimant's responsibility for allegedly

testing positive during a random drug screen. The hearing was postponed to February 10, 1995.

On February 22, 1995, the Carrier notified the Claimant that he had been found guilty of providing a "a positive sample in random drug and alcohol test collected January 4, 1995 in violation of Company Policy...." He was also told that he violated the terms and conditions set forth in the Rule G bypass he had executed in late 1993. Claimant was terminated by the Carrier.

On February 24, 1995, the Claimant advised the Carrier of his desire to appeal his termination under the provisions of the Agreement and this matter is now before this Board.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record that the sample collected from the Claimant on January 4, 1995, tested positive for marijuana. The final report by the NIDA-approved laboratory is included with the record. In addition, there is a statement by Dr. Janiga, the medical review officer of the Carrier, that he has reviewed the results of the urine drug test in accordance with the applicable federal regulations and that he determined that the results represented a verified positive test.

The Organization raises the issue that none of the supervisors observed the Claimant to be acting in such a manner as he may have been under the influence of alcohol or drugs on the date that he was tested. In addition, the Organization correctly

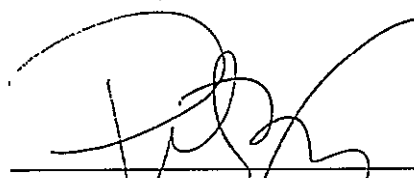
points out that the aftercare commitment executed by the Claimant in December of 1993 does not require that he agree to random testing. However, the Carrier apparently did not test the Claimant pursuant to his aftercare program or his Rule G bypass. The Claimant was tested pursuant to the random testing procedures that were implemented by the Carrier in January of 1990 in compliance with the U.S. Department of Transportation regulations. That program, which is set forth in a document which is included with the record, allows the Carrier to randomly test employees and requires the employee to comply with the urinalysis.

The Carrier tested the Claimant on January 4, 1995, and his results were positive. Since the Claimant executed the Rule G bypass in which he stated that he understood that any positive drug test would constitute a breach of his commitment and that his employment may be subject to termination, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. The Carrier rules prohibit employees from having any prohibited substances in their bodily fluids when reporting for duty, while on duty, or while on Company property.

This Claimant had previously been found with illegal substances in his system. He was given a second chance, and he was later tested and found to have marijuana in his system. The Carrier's action was not without just cause. The claim is denied.

AWARD:

Claim denied.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

DATED: _____

DATED: _____