

Org. File 694-57-8955
Co. File TRN 0-6-14

Decision No. 5736
Case 1144
Supplemental List No. 91

SPECIAL ADJUSTMENT BOARD NO. 18
(Train Service Panel)

PARTIES TO DISPUTE: United Transportation Union-
Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: Request of Brakeman Rod R. Aszman, Shasta District, Oregon Division, for reinstatement to service with seniority unimpaired and for replacement of wage loss resulting from his suspension from service on January 14, 1986, and his dismissal from service on February 10, 1986, because of his alleged violation of Rule 607 of the General Code of Operating Rules, which occurred on January 13 and 14, 1986.

STATEMENT OF FACTS: The train on which the Claimant was a crew member was subject to a derailment on January 13, 1986. After the derailment, the Claimant and the road engine crew moved the head part of the train from the derailment site, mile post 388, to Montague, set it out, cut public road crossings, and ordered a trainmaster and a road foreman of engines to transport the crew members, including Claimant, to Mount Shasta Hospital for urinalyses.

At the hospital, the Claimant declined to sign a form giving consent for the urinalysis although he indicated he would send a urine sample to a laboratory of his choice and give a copy of the results to the Carrier. After a second refusal to sign the form and provide a sample for the Carrier's laboratory, he was removed from service and later was directed to attend an investigation. The notice read in pertinent part as follows:

"You are hereby notified to be present at the office of the Trainmaster, Dunsmuir, California, 1:00 p.m., Friday, January 17, 1986, for formal investigation to develop the facts and place responsibility, if any, in connection with your alleged failure to fill out Consent Form for Toxicological Test, and your refusal to take Toxicological urine test at Mt. Shasta Community Hospital, Mt. Shasta, as instructed by Trainmaster J. J. Plank, at approximately 1:14 a.m., January 14, 1986, while acting as brakeman on the 1-MERVY-13, SP Extra 9161 West.

"You are hereby charged with responsibility, which may involve violation of that portion of Rule 607, reading:

"CONDUCT: Employees must not be:
(3) Insubordinate.'

"of the General Code of Operating Rules adopted by the Southern Pacific Transportation Company effective November 1, 1985.

"and, in addition, Rule 607, as contained in Northern Region Timetable No. 1, effective Friday November 1, 1985, at 12:01 a.m. Pacific Standard Time, Page 147, reading:

"RULE 607. CONDUCT: Any act of hostility, misconduct or willful disregard or negligence affecting the interest of the Company is sufficient cause for dismissal . . .'

"Indifference to duty, or to the performance of duty, will not be condoned."

Subsequently he was dismissed. However he was offered conditional reinstatement without prejudice to his claim for time lost, effective September 30, 1986. It was refused by the Claimant.

FINDINGS: The Board finds, after hearing upon the whole record and all evidence that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement and it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

DECISION: A threshold issue raised at the investigation was whether the Carrier had probable cause for the testing. In this regard, it is noted the Claimant failed to cite this as a reason at the time of his refusal to sign the consent form. Even so, the record bears out that a cause for the derailment ruling out human factors could not be established at the scene of the derailment. Thus, there was probable cause for testing. Moreover, the fact that nothing was so obvious about the crew's condition to justify pulling the crew out of service prior to operating to Montague does not nullify the Carrier's right, based on probable cause, to determine if drugs or alcohol played a less obvious part in the derailment nor does it nullify their right to confirm that drugs or alcohol play no part at all in the derailment, thus vindicating the crew in this regard.

Given there was probable cause, the question remains if there was some other justification for the Claimant's refusal. The Claimant contends it was his choice which lab his sample was tested by. He is plainly wrong and his refusal was not justified.

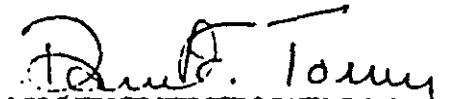
It is the Carrier who has the right to establish rules of conduct and establish reasonable procedures and policies necessary to enforce those rules. If the Claimant felt the procedures at the Carrier's lab were faulty and prejudicial, his obligation was to comply with the order and through the grievance procedure, up to and including this Board, argue the propriety of the Carrier's lab. If the procedures were faulty this Board would address the issue and order the appropriate remedy.

It is not the Claimant's place or the Carrier's obligation to negotiate a procedure to his personal liking. It is the Carrier's choice. They are entitled to make that decision, recognizing, of course, that their actions live or die based on the ultimate appropriateness of those choices.

Thus, based on the evidence, the Claimant was insubordinate. However, under these circumstances, permanent dismissal is too severe. The Board will give the Claimant one more chance for employment believing that he now understands the necessity and importance of complying with the Carrier's rules and addressing any challenges he has to these rules and directives in the grievance procedure.

The Carrier is directed to reinstate the Claimant with seniority and other rights unimpaired but without pay for time lost.


Gilbert H. Vernon
Chairman and Neutral Member


D. E. Torrey, Carrier Member


Glynn Gallagher, Employee Member

Dated this 11 day of May 1987
San Francisco, California.