

Org. File 240-57-8574
Co. File TRN L-5-54

Decision No. 5750
Case 1138
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 Stephen T. Howard, Los Angeles Division, for reversal of his return to dismissed status on September 17, 1985, which followed his conditional reinstatement to service on March 6, 1985, which, in turn, followed his dismissal from service on December 11, 1984, because of his alleged violation of Rule G of the Rules and Regulations of the Transportation Department.

STATEMENT OF FACTS: On December 11, 1984, the Claimant was dismissed for a violation of Rule G. The incident on which this was based involved a positive toxicological test for marijuana.

On March 6, 1985, the Claimant was reinstated on a probationary basis. One of the conditions of the reinstatement was that he abstain from the use of drugs and alcohol and be subject to random testing. Another was that if he violated any of the probationary conditions he would be "returned to dismissed status."

In September 1985 the Claimant had a test which indicated a relatively high level of alcohol and the presence of marijuana metabolites. By letter dated September 17, 1985, the superintendent advised Claimant that he was returned to dismissed status by virtue of having failed to abide with the terms of his conditional reinstatement.

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: The Organization challenges the findings of the test and argues that the fact the Claimant wasn't given an investigation severely handicaps them in defending the Claimant.

Indeed, the Board is faced with both a procedural and a factual question. Procedurally the issue is whether an investigation was necessary under Article 57 where an employee has waived that right as part of a probationary reinstatement. We were faced with this question in Decision No. 5605. We stated there no investigation was necessary under the circumstances present. However, another important consideration in Decision No. 5605 was that there was no factual dispute as to the Claimant's condition.

In this case, there is a factual dispute. While an employee can--as Mr. Howard did--waive his right to an investigation as a condition of a probationary reinstatement, the Carrier's right to take future disciplinary action is not unchecked. The Carrier must have a factual basis for their action and the Organization must have a vehicle to challenge those actions.

The vehicle isn't Article 57 Section B (1) but Article 57 Section A which states:

"Section A. If a trainman believes he has been treated unjustly, he has the right to present his case in writing, or through his Local Chairman, to the Superintendent with such evidence as he has to offer. The Superintendent will investigate the matter and render his decision in writing without unnecessary delay. If such decision is unsatisfactory to the trainman, on written notice to the Superintendent it may be appealed to the delegated general officer. The General Chairman, UTU, will be furnished a copy of the decision rendered on appeal."

Thus, where a Carrier returned an employee to dismissed status the Organization may challenge that action. When challenged, the Superintendent is obligated to adequately investigate the matter and render his decision in writing. Moreover, the decision of the Superintendent must be supported by sufficient evidence to justify their action.

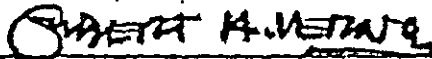
Applying these guidelines to these facts the Board finds there was no procedural violation. The Superintendent adequately investigated the complaint and rendered a decision in writing.


Substantively the Organization focuses its attention on the validity of the alcohol test results. The Board agrees that they are suspect in this case and would not serve as an independent basis for returning the Claimant to a dismissed status.


However, the record does contain sufficient evidence as to the validity of the test for marijuana. The initial positive results were subject to the best confirmation test available and no false positive was indicated. Thus, the Carrier didn't violate the agreement by returning the Claimant to a dismissed status on this basis.

It is noted however the Claimant would be subject to one last chance under the Carrier's program if he receives a favorable recommendation of the Carrier's counselors. We would encourage the Claimant to do so and would order the Carrier to give the Claimant another chance if he satisfies the conditions for reinstatement outlined in its policy dated September 24, 1984, within the next 12 months. His reinstatement would be without pay for time lost.

The claim is disposed of as set forth above.


Gilbert H. Vernon
Chairman and Neutral Member


D. E. Torrey, Carrier Member


Glynn Gallagher, Employee Member

Dated this 12 day of June 1987
San Francisco, California.