

Org. File 238-57-1327
Co. File TRN 8-S-58

DR's
Decision No. 5827
Case 1322
Supplemental List No.

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 Ivan W. Carey, Salt Lake District, Sacramento Division, for reinstatement to service with seniority unimpaired and for replacement of wage loss and productivity credits resulting from his suspension from service on or after October 18, 1987, and from his dismissal from service on December 8, 1987, because of his alleged violation of Rule G of the General Code of Operating Rules, which occurred on October 18, 1987.

STATEMENT OF FACTS: On October 18, 1987, the Claimant was one of several crew members who was requested by the Company to submit a urine sample at Now Care Center, Ogden, Utah, for toxicological testing. The Claimant produced two urine samples at this time. Now Care personnel dispatched one sample to Roche Biomedical Laboratories (RBL); the other, at Claimant's request, to Associated Regional and University Pathologists (ARUP). Roche Laboratories reported the Claimant's urine tested positive for cannabinoids at a cut-off level of fifty nanograms per milliliter. They used two screening tests (the RIA and EIA). A confirmatory test, conducted at the Roche Laboratory by the gas chromatography/mass spectrometry method at a cut-off level of less than ten nanograms per milliliter, asserted the presence of 27 nanograms per milliliter of carboxy THC, a metabolite of marijuana. The ARUP report, also conducted at a detection level of fifty nanograms per milliliter, asserted a negative showing of cannabinoids. There was no confirmatory test done by ARUP since the screening test was negative.

On October 25, 1987 the Carrier directed the following notice to the Claimant:

"You are hereby notified to be present at the office of the Terminal Superintendent, 198 West 28th St. Ogden, Utah at 9:00 AM MST. on October 27, 1987 for Formal Investigation to develop the facts and place responsibility, if any, for your alleged illegal use, while on duty, of a drug, narcotic, or other substance which affects alertness, coordination, reaction, response or safety while you were working as Brakeman

"on the X9318 West on Oct. 18, 1987 at Ogden, Utah. For which occurrence you are hereby charged with responsibility which may involve a violation of Rule G.

"That portion reading:

"The illegal use, possession or sale while on or off duty of a drug, narcotic, or other substance which affects alertness, coordination, reaction, response, or safety, is prohibited". As revised in Western Region Timetable Number One (1) effective April 5, 1987."

"You are entitled to representation and witnesses in accordance with your Agreement Provisions. Any request for postponement must be submitted in writing, including the reason therefor to the undersigned."

Subsequently, the Claimant was dismissed.

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: It is the conclusion of the Board that there is insufficient proof in this record that the Claimant was guilty of violating Rule G. The Carrier did not do an adequate job at the investigation of reconciling the fact one test was negative and one test was positive, at the 50 ng level. This record just leaves too much doubt as to the validity of the test in this case.

Additionally, the validity of the confirmatory test (GC/MS) when combined with the conflicting initial screening test, is suspect because it was done within the same laboratory as the initial screening. In Decision No. 5734 the broad issue of the Carrier's testing procedures was reviewed. The Carrier stated at that time that the validity of the GC/MS was underscored because it was done by a second independent laboratory. This avoided the potential reluctance of the initial laboratory to invalidate its own procedures by a conflicting confirmatory test. In short, it was asserted in Decision No. 5734, having two outside labs involved increased the objectivity and reliability of the test. Thus, the Board is not convinced on the basis of this record that the change in procedure (having both tests done under one roof) is appropriate. Additionally no notice was given to the Union of this change.

In view of the foregoing the claim is sustained.

GILBERT H. VERNON

Gilbert H. Vernon
Chairman and Neutral Member

P. G. SEARS

P. G. Sears
Carrier Member

G. W. GALLAGHER

G. W. Gallagher
Employee Member

Dated this 30th day of January 1989
San Francisco, California.