

Org. File 835-57-9375
Co. File TRN L-6-66

Decision No. 5846
Case 1341
Supplemental List No. 9:

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 James D. Burroughs, San Joaquin District, Los Angeles Division, for reinstatement to service with seniority unimpaired and for replacement of wage loss and productivity credits incidental to his suspension from service on May 13, 1986 and his dismissal from service on May 30, because of his alleged violation of Rule G of the General Code of Operating Rules, which occurred on May 3, 1986.

STATEMENT OF FACTS: On May 3, 1986 the Claimant was working as a brakeman on the Pixley Local when at approximately 9:15 PM he injured his fingers/hand in the process of closing the door of his locomotive. The Assistant Trainmaster was advised of this injury and made arrangements for the crew to run the remaining work and bring the Claimant's light engine to Fowler, where he met the engine and subsequently drove the Claimant to St. Agnes Hospital's emergency room for treatment. The Claimant was asked to provide a specimen for urinalysis and did so. The results were positive for cocaine metabolites.

On May 13, 1986 the Carrier directed the following letter to the Claimant:

"You are hereby notified to be present at the Office of the Trainmaster, Fresno, California, at 1:30 PM, Friday, May 16, 1986 for formal investigation to develop the facts and place responsibility, if any, in connection with your allegedly having in your system an illegal substance, cocaine, on May 3, 1986, which the Company became aware of on May 13, 1986, for which occurrence you are hereby charged with responsibility which may involve a violation of Rule G as revised in Northern Region Timetable #2, Northern Region Special Instructions, Page 205, effective Sunday, April 27, 1986, which reads:

"The use of alcoholic beverages or intoxicants by employees subject to duty, or their possession, use, or being under the influence thereof while on duty or on Company property, is prohibited.

"Employees shall not report for duty under the influence of, or use while on duty or on Company property any drug, medication or other substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety. Questionable cases involving prescribed medication shall be referred to a Company Medical Officer.

"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."

"of the General Code of Operating Rules, Southern Pacific Transportation Company. 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 thereof, to the undersigned."

Subsequent to the investigation 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: At the outset the Organization contends probable cause did not exist for the testing. They argue:

"Closing a door on one's hand is not an act that, by itself, should lead a reasonable man to suspect alcohol-induced or drug-induced impairment. Few of us would escape undergoing urinalysis at daily or weekly intervals if such minor mishaps manifested impairment."

The Carrier argues that the fact the Claimant attempted to catch the door by placing his hand on the door edge instead of the door handle is a reasonable basis to require the Claimant to submit to testing.

The Board agrees that such a minor incident does not constitute probable cause for drug testing. The Carrier has been allowed great latitude in the area of probable cause drug testing but this case goes too far. This incident is a rather ordinary occurrence. Who hasn't occasionally grabbed a door edge rather than the door handle. The mere occurrence of such a minor incident such as this is not sufficient to justify mandating a drug screen. There would have to be other circumstances present to justify requiring the Claimant to submit to toxicological testing.

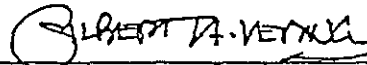
Accordingly, the evidence from the improper test must be rejected. Ordinarily, the sum total of evidence against an employee is the result of a toxicological test. As a result in such cases, the discipline would have to be overturned, the Claimant returned to service and paid for time lost. However, in this case the test results were not the only evidence against the Claimant.

In their closing statements, the Local Chairman and the Claimant made tacit admissions that he suffered from a chemical dependency problem. While the test results must be rejected for lack of probable cause, from a practical as opposed to technical standpoint, the Claimant's admission cannot be ignored. Indeed his admission as to a problem is significant and has a material bearing on the remedy in this case.

In view of the lack of probable cause in the first place the Claimant is entitled to reinstatement. However, in view of his admission of a problem and the fact that, based on this record, his efforts to address it have been minimal, the Claimant is considered to have been unavailable for service during his period of dismissal. Therefore, his reinstatement is without pay for time lost. Additionally, his reinstatement must be conditional. The Claimant has six months to meet the conditions -- as set forth in the Carrier's policy on Rule G -- necessary for reinstatement. These conditions shall be spelled out to the Claimant in writing by the Carrier within ten days of this Award. These conditions include meeting with the Carrier's EAP counselor and gaining a favorable recommendation. If the Claimant does not gain a favorable recommendation within six months he shall be deemed as having abandoned his employment.

AWARD

The claim is disposed of as set forth above.



Gilbert H. Vernon
Chairman and Neutral Member



P. G. Sears
Carrier Member



Glynn Gallagher
Employee Member

Dated this 6TH day of June, 1989
San Francisco, California.