

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 454

Case No. 454  
UP File 900014

Parties Brotherhood of Maintenance of Way Employees  
to and  
Dispute Union Pacific Railroad  
(Former Missouri Pacific Railroad Company)

Statement

of Claim: 1. Carrier violated the agreement, especially Rule 12,  
when Machine Operator T. A. Bess was dismissed from service  
on September 5, 1989.

(2) Claim on behalf of Mr. Bess for wage loss suffered  
beginning September 5, 1989, until reinstated with  
seniority, vacation and all other rights unimpaired.

Findings: The Board has jurisdiction by reason of the parties  
Agreement establishing this Board therefor.

This is the sixth in a series of discipline cases  
placed before this Board arising out of Carrier's adoption  
of a new method for testing for drugs during a periodic  
physical examination.

The Claimant, Machine Operator T. A. Bess, following a  
formal investigation held on August 16, 1989 on the charge  
of:

"being insubordinate when you failed to comply with  
instructions given you in a letter dated April 27, 1989  
specifically instruction #3 from Track Supervisor L. D.  
Taylor..."

was found culpable. He was dismissed from service as  
discipline therefor.

Said letter of April 27, 1989, in part, read:

"We have been advised by the Union Pacific Medical Director  
that a urine sample taken on April 18, 1989 during your  
physical examination tested positive for illegal or  
unauthorized drugs. Accordingly, the Company Medical  
Director has disqualified you from service and notified you  
of the availability of the Company's Employee Assistance  
Program..."

Upon the advice of the Medical Director, this is to notify  
you that you are required to comply with the following  
instructions:...

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3. If you fail to provide a negative drug test as set out above within ninety (90) days from your date of disqualification, or if you fail to complete the Employee Assistance Program successfully, as set out in paragraph 2 above, you are hereby notified that you may be subject to dismissal if it is determined that you failed to follow the instructions in this letter.

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In summary you have been disqualified from service by the Union Pacific Medical Director for failure to pass a drug test during your physical examination and your qualification to return to service is conditioned on following the instructions in this letter. Should you fail in this regard, appropriate action will be taken."

The Claimant failed to provide a negative urine sample within 90 days of notification of medical disqualification.

Consequently, in the case at bar, because the Claimant had been medically disqualified because of a positive drug test and because he failed to provide a negative urine sample within the prescribed 90 day period and the Claimant was given a formal hearing on the charge of insubordination. He was found culpable and dismissed as discipline therefor.

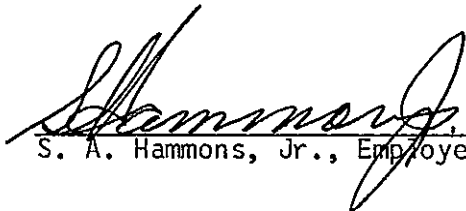
The Board finds that Claimant was accorded the due process to which entitled. The fact that he failed to attend the investigation does not minimize its fairness nor validity. Claimant is bound by the evidence adduced thereat.


There was sufficient evidence adduced to support Carrier's conclusion that Claimant was culpable of insubordination. Carrier established through substantial, credible evidence that the Claimant violated the Carrier's lawful and reasonable drug policy. He simply failed to follow the instructions of the Carrier's Medical Director, the Vice President of Engineering Services, April 10, 1989 policy announcement as well as the instructions of his supervisor, L. D. Taylor, dated April 27, 1989.


The arguments such as Carrier failed to produce evidence into the record that Claimant had unauthorized drugs in his system is not a timely, relevant or proper issue to be reviewed. The investigation concerned insubordination and the facts support that charge.

The discipline is controlled by the circumstances and facts of this case. The discipline of dismissal in an insubordination case of this nature is consistent with the announced policy and is not deemed unreasonable. This claim will be denied.

Award: Claim denied.

  
S. A. Hammons, Jr., Employee Member

  
D. A. Ring, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued February 26, 1991.