

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 474

Case No. 474
UP File 900324

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 Trackman A. Baker was dismissed from service on
February 20, 1990.

(2) Claim on behalf of Mr. Baker for wage loss suffered
beginning February 28, 1990, 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 eleventh in the series of disciplinary
cases presented to this Board arising from the
implementation of the Carrier's new drug testing policy
adopted about April 10, 1989.

The Claimant Trackman, A. B. Baker, following a formal
investigation held on February 20, 1990, on the charge that
he failed to comply with instructions given in a letter
dated October 16, 1989, specifically instructions #3 from
Track Supervisor T. B. Cooper, was found to be culpable
thereof. He was dismissed from service, on February 28,
1990, as discipline therefor.

The Assistant Vice President Engineering Services, Stan
McLaughlin, issued a policy statement on April 10, 1989,
entitled "Union Pacific Railroad Policy and Procedures
Governing the Drug Testing Component of Engineering
Department Physical Examinations."

Said policy reflected that should an employee test
positive for illegal or unauthorized drugs during the
routine periodic physical examination that the employee
would be medically disqualified from service and instructed
that return to service would be predicated only upon the
employee's ability to demonstrate a fitness for duty, in
accordance with the instructions that within ninety (90)
days from the date of the employee's disqualification, by
providing a negative urine sample through a medical facility
selected by the Company Medical Director. Further, said 90
day period could only be extended by the employee's entrance

into the Company's Employee Assistance Program and with such program requiring treatment of greater than 90 days. The policy further indicated that should an employee fail to become "clean" or enter the EAP within the 90 day period that such employee would be subject to dismissal if it was determined that the employee had failed to comply with the Company's instructions.

Said policy also reflected that upon an employee's return to service the employee would be required to remain drug-free and to submit to follow-up drug testing under the auspices of the Union Pacific's Medical Director's office for 3 years from the date of the return to service. Failing to provide a negative test during the 3 year period, said employee may be subject to dismissal if it was determined that the employee failed to follow a valid Union Pacific instruction.

In the instant case the Claimant had tested positive for illegal or unauthorized drugs during his routine periodic physical examination taken on October 4, 1989. The Claimant was notified by the Company's Medical Director that he had been disqualified from service, given a copy of his October 4 test and instructed on what he had to do to comply with the policy. Additionally, on October 16, 1989, he was also notified by Track Supervisor T. B. Cooper:

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

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..."


The Claimant acted contrary to the October 16, 1989 instructions. He neither presented himself for a urinalysis retest nor did he enter the Carrier's Employee Assistance Program. Claimant thereby subjected himself to the charge of insubordination for such failure.

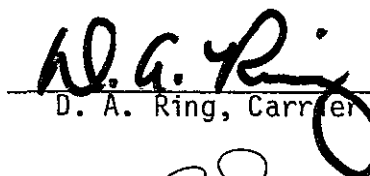
The record reflects that Claimant had committed himself to the Baptist Medical Center on October 12, 1989 and successfully completed their program and was released on the November 11, 1989. During his period of treatment he was under the care of a Dr. McGurk. He has joined Narcotics


Anonymous and attends meetings daily. The Board finds on this record that while the Claimant is culpable of failing to comply with the specific instructions of Carrier there are circumstances present which redound favorably to consideration for conditional reinstatement. This is one of the initial series of cases that arose from the Carrier's implementation of its new policy and testing program; the Claimant while not living with the letter of the policy complied with its spirit. The Claimant is not absolved thereby. He has paid a price by the time out of service. Claimant will be conditionally reinstated to service with all rights unimpaired but without any pay for the time out of service subject to providing a negative sample on his return to service. He will be subject to the three year retesting requirement and must go only to Carrier required facilities and he must comply with the actual letter of the policy in the future. The Claimant will be on a three year probationary status insofar as that requirement is concerned. The Claimant will, of course, take the necessary return to service physical exams, including urinalysis retesting.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


S. A. Hammons, Jr., Employee Member


D. A. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued March 20, 1991.