

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 476

Case No. 476  
File 90073

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when employees D. L. Zaerr, et al (14 total Claimants) were dismissed from service on October 4, 1989.

(2) Claim in behalf of Mr. Zaerr, et al for wage loss suffered beginning October 4, 1989, until reinstated.

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

The fourteen Claimants in this case were Western District Tie Gang employees who, following a periodic physical examination which included drug screen testing, were advised by the Carrier's Medical Director, under date of October 4, 1989, that the results of such examination revealed that they were positive for illegal or unauthorized drugs and thus such employees were medically disqualified from service on said October 4. The Claimants were also advised that they could seek treatment through the Carrier's Employee Assistance Program (EAP) but, in any case, they would be unable to return to service until such time as they had demonstrated their fitness for duty by providing a negative drug test.

The Claimants received similar such advice from their Track Supervisor. The Claimants were advised that they were not being afforded any more than 90 days from the date of their letters disqualification to demonstrate that they had become drug-free by presenting themselves to a medical facility selected by the Company Medical Director providing a urine sample that tested negative for illegal or unauthorized drugs. The Claimants were also advised that if they entered the EAP and such course of treatment required greater than 90 days the time period would be extended.

The Board finds that this case is another in the series of cases arising out of illegal and/or mind altering drugs or substances which resulted in several of our previous awards, including in particular Award No. 434 which by reference is incorporated herein.

The genesis for these cases arose under date of April 10, 1989, when the Assistant Vice President Engineering Services, Stan McLaughlin, wrote a letter to each and all Maintenance of Way employees. He advised them that beginning the week of April 17, 1989, routine periodical physical examinations would be given System Gang employees for the purpose of determining employee's fitness to perform his or her work safely, and that such examination would include a drug test as part of the traditional urine sampling regimen taken during the examination. Said employees were notified that if they failed this particular portion of the physical examination they would be medically disqualified from service and that they would not be permitted to return to work until it was determined that they were again physically fit.

McLaughlin attached a two page policy dated April 10, 1989 entitled "Union Pacific Railroad Policy and Procedures Governing the Drug Testing Component of Engineering Department Physical Examinations." Said policy spelled out the rules, methodology and respected results or actions to be taken when not in compliance.

Subsequently, all of these Claimants were physically examined. They were medically disqualified which is not being disciplined. They were, in essence, instructed to rid their system of illegal drugs.


In the instant 4 cases all of the Claimants complied with the terms of the Carrier's policy and were therefore requalified for service by the Company's Medical Director on various dates during October, November, December 1989 and January 1990.

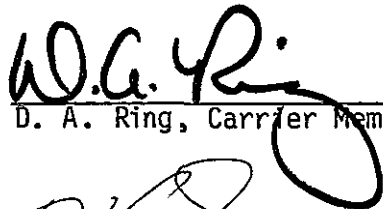
The Brotherhood of Maintenance of Way Employees took the Carrier to court alleging, in essence and effect, that the Carrier could not do this without negotiation and the parties, ultimately, agreed that it would be bound by the decision rendered by the Supreme Court in Consolidated Railroad Corporation.

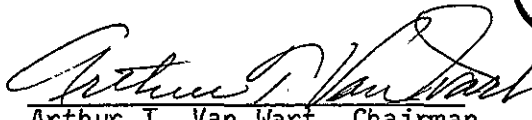
This Board has previously found that the Carrier, in the circumstances, has the right to establish reasonable medical standards, that it has the right to conduct periodic medical examinations but has not held that it can do so randomly. The complained of tests have been shown to have been conducted pursuant and consistent with FRA standards. Neither the testing methodology or the chain of custody has been shown to have been violated. The testing laboratory is a highly reputable testing facility.

Unless there are circumstances introduced to alter or to cause the Board to find otherwise it so far has upheld the Carrier's handling in most but not all cases. The Board finds nothing in this record to cause it to find differently. Therefore, the claims 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 August 27, 1991.