

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 477

Case No. 477
File 890588

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

Statement

of Claim: 1. Carrier violated the Agreement, especially Rule 12, when Trackman M. C. Roberts was withheld from service beginning May 2, 1989.

2. Claim in behalf of Mr. Roberts for eight (8) hours per day, any overtime and holiday pay, and any additional expense incurred that would normally be covered by benefits provided by the Carrier, beginning May 2, 1989 and continuing until Claimant is reinstated to service with all rights unimpaired.

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

The Claimant, an Arkansas Division Trackman, M. C. Roberts, was medically disqualified by self explanatory letter on May 2, 1989 by the Carrier's Medical Director, Dr. D. E. Richling, because the results of his periodical physical examination, which included a drug screen, revealed that the Claimant had tested positive for illegal or unauthorized drugs.

The Claimant was therein advised that he could seek treatment through the Company's Employees Assistance Program (EAP), but, in any case, he would be unable to return to service until such time as he had demonstrated his fitness for duty by providing a negative drug test.

The Claimant Trackman was also similarly so advised by his Track Supervisor, C. E. Bullen, Jr., that under his medical disqualification he was being afforded no more than ninety (90) days from the date of the letter to demonstrate that he had become drug-free by presenting himself to a medical facility selected by the Company Medical Director and providing a urine sample testing negative for illegal or unauthorized drugs. Trackman Roberts was also placed on notice that the ninety (90) day period could only be extended indefinitely if he chose to enter the EAP Program and if such course of treatment required time greater than 90 days to complete.

The Claimant complied with the written instructions. He produced a negative sample and was returned to service on May 27, 1989.

This case is similar to that in Award No. 433, the findings of which by reference are incorporated herein and which our Board therein denied. Here, the Claimant was tested April 23, 1989, and the results showed positive. He was so notified on May 2. The Claimant took a drug screen test at a facility not approved by the Medical Director on May 8, some 15 days after his first test and 7 days after he had been notified of the positive finding. The results were negative.

The Board finds that the time lag between the test and retest some 15 days, is too long to permit sufficient credibility to be attached to the negative results thereof. THC can remain in the body fluids from 72 hours to more than 72 days depending on how heavy it's use. Further, each employee had been placed on notice that any retest had to be done at a Carrier's selected facility.

The Claimant was retested by the Carrier some 24 or so days after the first test, i.e., May 25, 1989. The second test by Carrier produced a negative test result. Consequently, the Claimant was medically okayed for service.

It is clear to this Board that the Claimant was not randomly tested. It is equally clear that he was given his May 2nd positive test findings as part of the notification given under date of May 2 by the Medical Director.

Absent any specifics as to any alleged failures in the Carrier's drug testing program such as the collection of the urine sample, the methodology followed in the chain of custody, or in the testing methodology, such allegations must fall for lack of support.


Here, simply stated, there was a medical disqualification. Such medical disqualification does not require nor involve any need for the holding of a formal investigation. As to the possibility of having a third party medical board cause, there must be conflicting medical opinions shown therefor by something such as a negative test that was taken on the same day; namely, April 23 or the next day April 24 that could be meaningful evidence for the Board to consider that there might be cause for reasonable doubt as to the original test. While our Board does not decide medical questions, we do determine if there is a need therefor. We find none. A third party medical board requires the existence of differing medical evidence, as

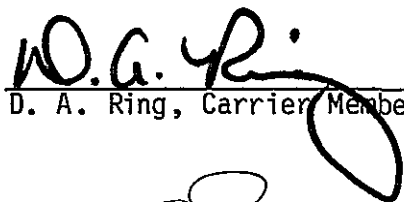
suggested above, to show there is a basis therefor. However, such is not before this Board at this time.

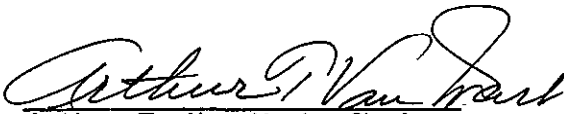
The Rule G By-Pass Agreement has no application to this situation. That becomes applicable when a fellow employee relieves another employee that is under the influence of alcohol and/or drugs and notifies the Carrier of same. Those circumstances are not involved here.

In the circumstances, this case 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.