

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 595

Docket No. 595

U. P. File No. 920443

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when J. L. Conley (SSN 499-66-2493) was dismissed from service on May 1, 1992 for tampering with a urine specimen.

(2) Claim in behalf of Mr. Conley for wage loss suffered beginning May 1, 1992, 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.

Machine Operator Helper J. L. Conley, following a formal investigation held, on March 25, 1992 on the charge of tampering with a urine specimen sample on February 27, 1992, resulted in the Carrier concluding therefrom that the Claimant was culpable. As in Award No. 593 and 594 concerning two distinct charges Carrier again found the Claimant culpable and, as in said Awards, dismissed him from service as discipline therefor.

The Claimant was accorded the due process to which entitled under his discipline Rule 12.

There was sufficient evidence adduced to support the Carrier's conclusion that the Claimant was guilty of the charge placed against him. The Union Pacific Railroad Drug and Alcohol Policy and Procedures, effective January 16, 1990, was involved (transcript Exhibit C12) particularly that portion IX - Refusals to Permit Testing/Tampering:

"...Employees (excepting those applying for a transfer to a safety-sensitive job) who refuse to permit drug or alcohol testing under this policy will be immediately withdrawn from service. Tampering with a sample in order to prevent a valid test (e.g., through substitution, dilution or adulteration of the sample) constitutes a refusal to provide a sample."

After removal from service for refusal to provide a sample, a disciplinary investigation will be held, if required by Agreement, to determine if the employee refused to provide a sample..." (emphasis added)

Each Engineering Services employee is required as part of the yearly physical examination to give a urine specimen, to be tested for illegal drugs. On the date in question, the Claimant produced a urine specimen which to the collector seemed odd. The temperature thereof did not register on the tape. The collector stated that the specimen jar felt cold to the touch. Hence, pursuant to instructions, the collector took Claimant's temperature after the specimen which registered 97.6 degrees.

The Claimant was required to give a second specimen under the observation of a male employee working on the medical van. While the results of the first specimen indicated that there were no drugs in the Claimant's system the cretein level was very low. The results from the second specimen given about an hour later indicated normal to high cretein level but was also negative for drugs.

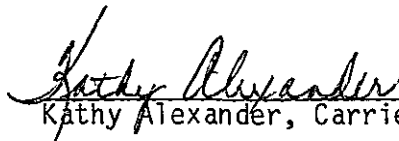
The record supports the Carrier's conclusion that something was used to dilute the first specimen and not the second specimen. It is not necessary for the Board to determine why a sample was tampered with but rather to prove that it was. The Board finds that the Carrier has so proven.

The discipline is not deemed to be unreasonable particularly in view of the purpose for the testing. Nor is it deemed unreasonable in the circumstances of the Claimant's actual status as a result of the other awards. This claim will be denied.

Award: Claim denied.



S. A. Hammons, Jr., Employee Member



Kathy Alexander, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member