

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 617

Docket No. 617

File 930187

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12,
when J. L. Williams (SSN 429-02-7372) was dismissed from
service on December 3, 1992.

(2) Claim in behalf of Mr. Williams for wage loss suffered
beginning October 23, 1992 and continuing until Claimant is
reinstated with seniority, vacation and all other rights
unimpaired.

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

The Claimant, Machine Operator J. L. Williams, was
advised under date of December 2, 1992 following a formal
investigation on the charge:

"...you were insubordinate when you failed to comply with
instructions given you by Track Supervisor L. D. Taylor in
his letters of May 10, 1989 and August 3, 1989 to remain
drug free indefinitely as evidenced by the positive drug
test as a result of the follow-up drug test given you on
October 18, 1992 at Kansas City, Missouri...

I have found more than a sufficient degree of evidence was
presented to warrant sustaining all charges brought against
you. Accordingly, you are hereby dismissed from the service
of the Union Pacific Railroad Company..."

This case is similar or identical to our Award No. 614.
The findings of which by reference is incorporated herein.

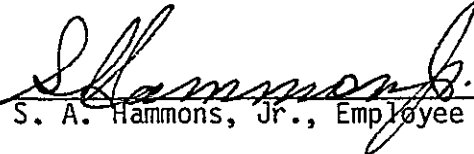
Claimant, who had 15 years of service, was given a
follow-up drug screen test on October 18, 1992, which was
clearly outside of the three year limitation of Carrier's
April 10, 1989 Drug Policy but within the five years of the
new January 16, 1990 Drug Policy. He was clearly also not
in compliance with the instructions under both drug policies
to remain drug free indefinitely.

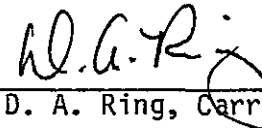
Our decision in Award No. 614 will be similarly applied here because of procedural reason, i.e., the tainted evidence improperly used. The Claimant will be permitted to return to service with all rights unimpaired but without pay for time lost. He will be entitled to enter EAP. The application of the new five year limitation in the January 1990 Drug Policy does not apply in this particular case.

But for the improper application of a follow-up drug screen, on October 18, 1992, the Claimant's disobedience to Carrier's instructions to remain drug free would not have been brought to light. The Claimant might be still in violation the Carrier's instructions to remain drug free. If one desires to play Russian roulette with their livelihood, he may. However, random testing has no time limitation to provide help.

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 January 31, 1994.