

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 129  
Docket No. 142

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
that:

- (1) The dismissal of Machine Operator R.F. Boswell for alleged insubordination was without just and sufficient cause (Organization File 4SW-1244; Carrier File 81-88-35).
- (2) Machine Operator R.F. Boswell shall now be allowed the remedy prescribed in Rule 19(d)."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employees and the Carrier involved are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute herein.

On November 16, 1987, Claimant was operating a car mover as part of a crew that was picking up ties near Sioux City, Iowa. During Claimant's shift, the Jimbo crane used in the operation struck some electrical wires. Carrier's roadmaster then directed the crane operator, the conductor-pilot, and Claimant to submit to drug and alcohol testing. Claimant refused. Claimant subsequently was directed to attend a formal investigation of the charge:

Insubordination for your refusal to submit to tox test on November 16, 1987 as directed by your Supervisor.

The investigation was held as scheduled, and a copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.

This Board has reviewed the evidence and testimony in this case, and we must find that the Carrier had no probable cause to order the

Claimant to submit to drug and alcohol testing on the date in question. Therefore, the Claimant's refusal cannot be considered insubordination, and the claim must be sustained.

This Board is well aware of the extreme danger of employees in the railroad industry operating equipment and performing other duties while under the influence of drugs or alcohol. And this Board is also aware that the Carrier must have a flexible testing policy that enables it to test its employees after accidents and other incidents to determine if the employees involved were acting under the influence of drugs or alcohol while on duty. This Carrier has implemented a policy of testing employees who are involved in an incident which gives rise to the suggestion that impairment because of substance abuse might have been the cause of it, and we are not rejecting that policy here.

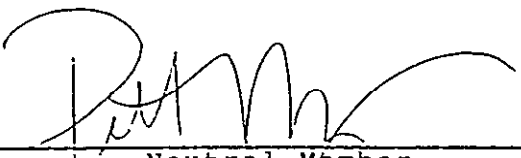
However, only the employees who could have conceivably been responsible for the accident can be tested. The Claimant in this case could have easily and quickly been exonerated from any responsibility for the accident that occurred, as he eventually was, and there was absolutely no probable cause to order the Claimant to submit to testing. For this Board to uphold the guilty finding of insubordination in this case would be tantamount to sanctioning a random testing policy or a mechanical application of the policy and to allow the Carrier to compel any employee within the vicinity of an accident to submit to testing.

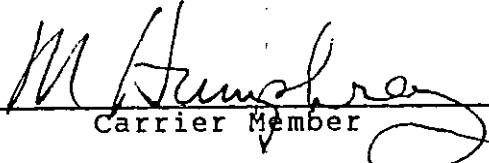
This Board will not stretch the Carrier's policy to that extreme despite the fact that we recognize the need to have a rational testing policy to rid the workplace of drugs and alcohol.

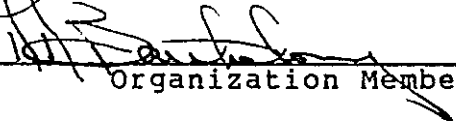
The Claimant was wrongfully found guilty of insubordination. The claim must be sustained.

Award:

Claim sustained. The Carrier is ordered to return the Claimant to work with full back pay, seniority, and other benefits to which the Claimant would have been entitled had he not been wrongfully terminated.

  
\_\_\_\_\_  
Neutral Member

  
\_\_\_\_\_  
Carrier Member

  
\_\_\_\_\_  
Organization Member

Date: 2-28-89