

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

**UNION PACIFIC RAILROAD COMPANY
(former Chicago and North Western Transportation Co.)**

Case No. 250

Award No. 227

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

- (1) The dismissal of Track Supervisor J. O. Stanford for alleged violation of Rule 1.5 of the Union Pacific rules, effective April 10, 1994, for alleged use of an illegal or unauthorized drug as allegedly evidenced by the positive test result of a Union Pacific follow-up drug test allegedly administered on June 9, 1999, in accordance with Union Pacific Railroad Drug and Alcohol Policy and Procedures, was arbitrary, capricious and in violation of the Agreement (Organization File 9KB-6539D; Carrier File 1204192).
- (2) As a consequence of the violation in Part (1) above, the Claimant shall be reinstated to service with seniority and all rights unimpaired, compensated for all lost time, and have his record cleared of any reference to the incident.

FINDINGS:

Claimant J. O. Stanford was employed by the Carrier as a track supervisor at the time of this claim.

On June 18, 1999, the Carrier informed the Claimant to appear for a formal investigation into the charges that he allegedly used an illegal or unauthorized drug as evidenced by the positive test result of the Union Pacific follow-up drug test given to him at 8:31 a.m. at the Global One Yard Office in Chicago, Illinois, on June 9, 1999. The

Carrier further alleged that the Claimant violated Rule 1.5 of the Union Pacific Rules and the Union Pacific Railroad Drug and Alcohol Policy and Procedures. The Claimant was withheld from service pending the investigation. In addition, the Carrier contended that because the alleged incident was the Claimant's second positive test result, he was not eligible for the one-time companion agreement and waiver and to work with the Carrier's Employee Assistance Program for purposes of reinstatement.

After one postponement, the hearing took place on July 2, 1999. On July 9, 1999, the Carrier notified the Claimant that he was found guilty of all charges and was being assessed a Level 5 discipline and dismissal from the service of the Carrier.

The Organization filed a claim on behalf of the Claimant challenging the dismissal. The Organization contends that the Carrier failed to afford the Claimant a hearing within ten days of the alleged offense and failed to give the Claimant a fair and impartial hearing on July 2, 1999; specifically, that the hearing officer was biased. The Organization further argues that the collector who collected the Claimant's urine sample did not follow the proper procedures in collecting and handling the Claimant's sample, specifically that the Claimant was instructed to sign the collection form ninety minutes before providing his specimen; that the bottles used to collect the urine were not unsealed and sealed in front of the Claimant; that it took a long time for the Claimant's urine sample to be tested; and that the lab that performed the test, Lab One, was not proven to be certified by the Department of Health and Human Services. The Organization argues that the Claimant expressed his concerns to the Carrier and that the Carrier could have performed another test, but chose to ignore the Claimant's concerns.

The Carrier denied the claim. The Carrier contends that as a result of the Claimant's second positive drug test on June 9, 1999, he violated the terms and conditions of his 1998 one-time return to service agreement and subjected himself to dismissal. The Carrier argues that the Claimant failed to remain drug free when his follow-up drug test produced a positive test result. The Carrier also contends that the hearing was scheduled in the time frame as soon as the test results were known and that it afforded the Claimant a fair and impartial hearing. The Carrier maintains that the Claimant certified that the urine specimen collected on June 9, 1999, was his own and that the testing agency that performed the test is certified. The Carrier also argues that the Claimant's argument that everything went wrong during the collection process is self-serving and that no factual evidence exists proving the Claimant's position. In addition, the Carrier argues that the Organization is merely attempting to deflect attention away from the Claimant's misconduct by its many assertions of Carrier wrongdoing.

The parties being unable to resolve the issues, this matter came before this Board.

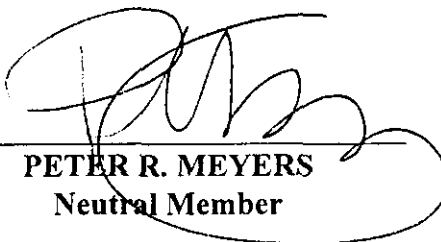
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant acted in violation of Rule 1.5 by having an illegal or unauthorized drug in his system on June 9, 1999. This Board has reviewed the procedures of the hearing as well as the procedures of the testing, and we find no violation of the Claimant's rights in either venue. Moreover, we do not find that the Carrier waited too long before scheduling the hearing in this case. It is apparent from the record that once the results came back positive, the Carrier acted quickly and scheduled the hearing within the required ten days.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The record reveals that this Claimant had previously tested positive in 1998. At that time, the Claimant was allowed to return to work and enter the Employee Assistance Program. Less than one year later, the Claimant again tested positive in this situation. As part of the Claimant's return-to-work agreement in 1998, he stipulated that he would remain drug- and alcohol-free. The Claimant did not live up to the terms of that agreement, and this Board cannot find that the action taken by the Carrier in terminating the Claimant's employment was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 4-3-01



CARRIER MEMBER

DATED: March 20, 2001