

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - Samuel Williams
Award No. 90
Case No. 90

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employes
and
Southern Pacific Transportation Company (Western
Lines)

STATEMENT
OF CLAIM

That the Carrier's decision to terminate Claimant Samuel Williams' services with the Carrier was excessive, unduly harsh and in abuse of discretion, and in violation of the terms and provisions of the current Collective Bargaining Agreement.

That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to reinstate and compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employes within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

The Claimant was first employed with the Company on October 6, 1971. Nearly a year later he was terminated and reemployed December 13, 1973. His employment record indicates

he has been counseled on several occasions for rule violations and was suspended three times for violating Rule 810. In May, 1986, the Claimant was dismissed from service with the Company. On or near December 4, 1987, he was reinstated to service with all seniority rights unimpaired and given nine months backpay and required to pass the Carrier's physical examination. The Claimant was notified of the PLB decision and the required physical examination through a letter dated December 14, 1987. By letter dated January 7, 1988, the Claimant was told to report for the required physical examination on January 20, 1988. The physical included a urinalysis, drug/alcohol screen. The urine sample tested positive for cocaine at a level of 241 NG/ML. Because of the presence of this illegal drug, the Claimant was sent a charge letter on January 25, 1988 advising him to be present for a formal investigation to develop the facts and determine his responsibility, if any, in violating Rule G of the Rules, Maintenance of Way and Structures, Southern Pacific Transportation Company. Those portions which read:

Rule G: The illegal use. . . while on or off duty of a drug, narcotic, or other substance which affects alertness, coordination, reaction, response or safety is prohibited.

On March 29, 1988, the Carrier notified the Claimant that they believed the evidence from the investigation established his guilt in violating Rule G. He was dismissed from the service of the Company.

The Carrier has established sufficient evidence against the Employee to verify he violated Rule G. In view of the

seriousness of the Claimant's rule violation and his complete record, discharge is an appropriate penalty.

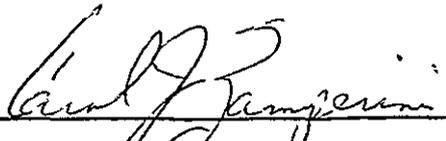
The Union's contention that the Claimant was not an employe at the time of the physical examination and therefore not accountable for the Company rules is without merit. First, even if the employe were a new hire, the detection of an illegal drug in his system would be adequate reason for his application to be rejected. Certainly, employes returning from a leave or ordered reinstated by a Board decision are even more subject to the rules. They were aware of the requirements before their service was interrupted. Besides, according to the Lieberman decision, the Claimant was required to take the Carrier's physical examination. It only makes sense that his reinstatement was conditioned upon his passing the physical, which he did not. There was no stipulation and no obvious intent for the Claimant to have the right to select the time and place for the physical. It was to be arranged by the Carrier, as in any other instance.

The Claimant had a responsibility to report to the Carrier free of alcohol or illegal substance from his system. He failed to do so. He squandered the opportunity.

AWARD

The claim is denied.

947-90



Carol J. Zamperini
Neutral

Submitted: .

December 26, 1989
Denver, Colorado