

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - B. K. Raynor
Award No. 93
Case No. 93

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Southern Pacific Transportation Company (Western
Lines)

STATEMENT
OF CLAIM

That the Carrier's decision to dismiss Claimant, B. K. Raynor from its service 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 Employees 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 employed on April 3, 1986. On July 28, 1987, he had a vehicular accident which he failed to report to the Carrier. When the Carrier learned of the accident, a

hearing was held on October 15, 1987, to determine whether or not the Claimant had violated Rules A and 607 of the Rules and Regulations for the government of Maintenance of Way and Structures and Engineering Department Employees. The Carrier reviewed the transcript of the hearing and determined there was sufficient evidence to dismiss the Claimant. On behalf of the Employee, the Union appealed the Carrier's decision. By letter dated, December 14, 1987, Superintendent, Medley agreed to reinstate the Claimant on a leniency basis.

As was the Company policy, the Claimant was required to submit to a Company-directed medical examination. As part of the physical, a urinalysis was completed. The results of the urinalysis indicated the Claimant tested positive for the presence of cannabinoids at a level of 105 NG/ML. Because of the results of the test, the Claimant was issued a charge letter and told to report for a hearing on January 13, 1988 (sic) for the purpose of determining his responsibility, if any, in violating Rule G of the Rules and Regulations for the Government of the Maintenance of Way and Structures Employees, those sections reading:

Rule G: The use of alcoholic beverages or intoxicants by employees subject to duty, or their possession, use or being under the influence thereof while on duty or on Company property, is prohibited.

Employees shall not report for duty under the influence of, or use while on duty or on Company property any drug, medication or other substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety. Questionable cases involving prescribed medications shall

be referred to a Company Medical Officer.

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

During the hearing the Claimant admitted he was guilty of violating the above rules and requested the Company show leniency. The Carrier subsequently dismissed the Claimant, but upon appeal from the Union agreed to consider his return to employment upon successful completion of his rehabilitation program (See August 3, 1988 letter from Medley). However, on February 9, 1989, Family Assistance Counselor, Cliff Melton informed the Carrier that the Claimant initially refused to enter the rehabilitation program. When he did decide to become involved in a program his insurance had run out. Mr. Melton found him another program, but the Claimant was removed from that program. As a result of his failure to complete a rehabilitation program, the Carrier refused to reinstate the Claimant.

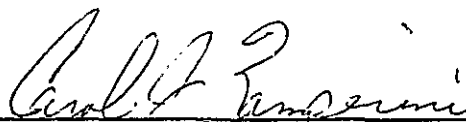
The Claimant is a short term employe and therefore has little vested interest in the Company. During his short tenure he has been guilty of two serious violations. One the failure to report a vehicular accident and the other the use of an illegal substance. Even after the Carrier was willing to give him, what was actually, a third chance, he refused the opportunity. The choice was his. If he had merely successfully completed the rehabilitation program he would have been reemployed. The Claimant made the incorrect decision, but

clearly it was his decision.

The policy of the Carrier is well-knowned. When someone has been off duty for whatever reason for an extended period of time, they are to submit to a Company-directed medical examination. This is certainly the prerogative of the Carrier and has been a long standing practice. When an employe fails this examination due to the presence of drugs in his/her system, the Carrier has the right to dismiss that individual unless the Claimant can prove the tests were tainted or inaccurate. In this case, the Claimant admitted guilt. Once he refused to participate in the rehabilitation program, and then, subsequently was removed from another program, he demonstrated a disinterest in protecting his position. The Carrier's actions were appropriate.

AWARD

The claim is denied.



Carol J. Zamperini
Neutral

Submitted:

December 28, 1989
Denver, Colorado