

SPECIAL BOARD OF ADJUSTMENT NO. 956

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES**

And

**NEW JERSEY TRANSIT RAIL
OPERATIONS, INC.**

AWARD NO. 131

CASE NO. 131

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman Clifton Durant for his alleged violation of 'NJ TRANSIT's Drug and Alcohol-Free Workplace Core Policy, Number 3.25 Section V. Standards of Conduct, A. Prohibited Behaviors ...in connection with... the result of a Reasonable Suspicion drug test confirmed positive with NJ Transit's Medical Review Officer (MRO) for a prohibited substance,' was without just and sufficient cause and undue punishment (Carrier's File BMW-24-4-05D).**
- (2) Trackman Clifton Durant shall now be allowed the remedy prescribed in Rule 26, Section 4. Exoneration."**

FINDINGS:

Special Board of Adjustment No. 956, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employes within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

After a lengthy absence, Claimant reported to the Carrier's Medical Services facility on August 9, 2004 for a return to duty physical examination. At that time, the nurse observed that Claimant exhibited slow speech, bloodshot eyes, and appeared drowsy. A reasonable suspicion drug test was conducted and the results were positive for cocaine.

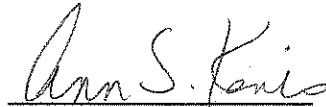
Claimant was notified by certified letter dated August 31, 2004 to attend an investigation in connection with the positive drug test. When he did not appear for the investigation, the matter was postponed and rescheduled several times. Efforts by both parties to contact the Claimant were unsuccessful. The investigation was

ultimately held on April 7, 2005, in absentia. Following the investigation, Claimant was dismissed from service.

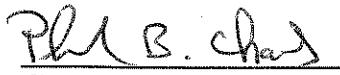
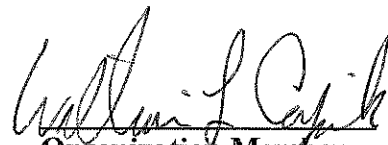
Based on our review of the record in its entirety, it is clear that there is substantial evidence in support of the charges directed against the Claimant. Once it is established that the Claimant committed the misconduct alleged, the Board will not overturn the penalty imposed absent a finding that the Carrier's determination was arbitrary, capricious or unreasonable. No such finding is warranted in the instant case. Testing positive for cocaine is a dismissible offense under the Carrier's Drug and Alcohol Policy and no circumstances are present which would merit reconsideration of the penalty imposed. Accordingly, the claim is denied.

AWARD

Claim denied.



ANN S. KENIS
Neutral Member


Carrier Member
Organization Member

Dated February 16, 2006