

SPECIAL BOARD OF ADJUSTMENT NO. 956

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES**

and

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

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**AWARD NO. 137
CASE NO. 137**

STATEMENT OF CLAIM:

The Organization requests that the discipline of dismissal from all service assessed to Mr. G. Genovese be expunged from his record, that he be returned to service with seniority intact and full restoration of all benefits.

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.

Claimant entered the Carrier's service on September 11, 1985. On September 5, 2005, he and a co-worker were working at MP 38 on the North Jersey Coast Line. While installing tie plugs, the Claimant used a defective spike hammer to hit a hardened hand punch. A chip of the defective hammer broke off and lodged in the co-worker's right arm, resulting in an FRA reportable injury.

In accordance with post-accident testing requirements, Claimant was taken to a medical facility for drug and alcohol testing. The report transmitted to the Carrier indicated that Claimant tested positive for marijuana metabolites.

At an investigation held on September 28, 2005, Claimant admitted to using marijuana in violation of the Carrier's Drug and Alcohol policy. He was subsequently notified of his dismissal from service.

The Board has reviewed the record in its entirety. Notwithstanding the Organization's contention that there was a flaw in the handling of the case due to an initial mix-up with regard to whether Section 3.25 or 3.25B of Carrier's Drug and Alcohol policy governed and was violated, we find that this was at best an inadvertent technical error which did not prejudice the Claimant in any way. The charges against the Claimant cited the correct provision of the policy and Claimant

was given full opportunity to defend against the charges. The circumstances here do not rise to the level of fatal prejudicial error which would be sufficient to vitiate the dismissal action.

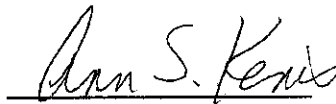
There is no question as to the seriousness of the incident. Nevertheless, we find that Claimant's seniority and generally good record are mitigating factors which warrant reconsideration of his employment. The Board finds that the time Claimant has been out of service should constitute sufficient discipline to impress upon him that his actions had adverse consequences. He must understand and make sure that there are no further occurrences of this nature in the future.

In light of the foregoing, the Board finds that the penalty of permanent dismissal is excessive. Claimant shall be returned to work on a leniency basis, without pay for time lost, and contingent upon the following conditions:

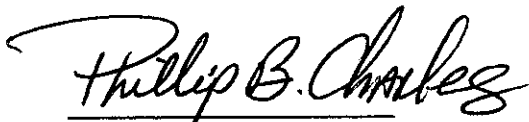
- Claimant must take and pass a return to duty physical which shall include drug and alcohol screening;
- Claimant will meet with an Employee Assistance Counselor and follow any prescribed treatment program if deemed necessary.

AWARD

Claim sustained in accordance with the Findings.



**ANN S. KENIS
Neutral Member**


Carrier Member
Organization Member

Dated July 28, 2006