

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

"AUTHORITY"

vs.

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

"ORGANIZATION"

AWARD NO. 24

STATEMENT OF CLAIM:

Claim of the Brotherhood (BMWE-87-11-F12) that:

The discharge of Track General Helper S. Enos was without just and sufficient cause in an arbitrary and capricious manner and was no more than harassment by the Authority as a result of its displeasure at Claimant's return to service by order of Award No. 11 of this Special Board of Adjustment No. 957.

REMEDY:

Claimant, S. Enos, shall be returned to service with full compensation for earnings lost, including overtime, with full seniority, vacation entitlement, and all those benefits and rights the Claimant enjoyed prior to his dismissal.

OPINION OF THE BOARD

Claimant, Sterling Enos, was discharged on September 3, 1987 for being in violation of Industrial Relations Order #85-1, ("85-1") which concerns use of, and testing for, intoxicants and/or controlled substances.

There exists some dispute concerning the facts of this matter. Claimant was a general helper. On August 26, 1987, a

prior non-related discharge case involving this Claimant was reviewed by this Special Board of Adjustment, following which the Board suggested the Authority recall Claimant from his discharge. When the Claimant was notified of his recall, he visited his physician on August 28, 1987, and had administered a body fluids test. This test proved negative.

On August 31, 1987, Claimant was given a return to work physical by the Carrier's medical department. This examination also included a body fluids test for drugs/alcohol screening. After the specimens were collected from the Claimant on August 31, he was immediately returned to service.

The Authority had Claimant's specimen of August 31 tested by SmithKline Bio Science Laboratory. SmithKline performed an initial screening of the specimen, which detected cocaine metabolite and cannabinoids. This screening was followed up with a confirming test of Gas Chromatography/Mass Spectrometry. SmithKline reported the positive test results to the Authority by document dated September 2, 1987. On September 3, 1987, the Authority terminated Claimant for violation of Industrial Relations Order 85-1. A subsequent retest of the Claimant's specimen, taken August 28, 1987, also proved positive, although the Organization maintains those test results also are not reliable.

Order 85-1, unilaterally promulgated by the Employer on September 20, 1985, states in relevant part:

In accordance with Public Policy and a major commitment of the Authority's Mission to ensure the

safety of employes, the public, and passengers, this Order supplements the current Rule Books, Orders, or Labor Agreements governing the use of intoxicants and/or drugs.

Because of the unpredictable residual effects of certain intoxicants and/or controlled substances, the presence of intoxicants or controlled substances in employes off-duty but subject to duty or reporting for duty; on the Authority property or in recognizable uniform; or in possession of, while on duty; is strictly prohibited and is a dischargeable offense. Any employe suspected of being in violation of this Order may be required to take a blood/urinalysis or other toxicological test(s).

An employe found to be under the influence of, or, so tested, whose test(s) results show a qualitative and/or quantitative trace of such material in his/her system shall be discharged from Authority service.

The Authority contends that the Claimant was properly discharged pursuant to 85-1, as he had a previous history of substance abuse. The Organization raises numerous arguments on behalf of the Claimant, including the alleged impropriety of 85-1.

In Award No. 17, also issued this day, the Board set forth guidelines concerning how it will consider certain cases arising under 85-1. Applying those principles to the facts of this case, the Board finds that the claim must be sustained in part.

The evidence indicates that prior to Claimant's discharge now at issue, he had a verified history of controlled substance abuse and had undergone rehabilitative treatment as recently as the Spring of 1986. Shortly thereafter, Claimant was discharged for reasons unrelated to drug use and not reinstated until August, 1987. In these circumstances, the Authority had a proper

basis for requiring the Claimant to undergo a body fluids test upon his return to work on August 31, 1987, and the test results could be legitimately considered by the Authority. The Board is satisfied that the testing procedures used were adequate and that the results accurately showed that the Claimant had traces of a controlled substance within his system. There is no evidence, however, that the Claimant was under the influence of controlled substances while at work or reporting for work.

In these circumstances, the Board finds that the Authority could not properly discharge Claimant. The Authority could, however, properly remove the Claimant from work until such time as he underwent additional rehabilitation and tested negative, as the evidence establishes that the positive result of the test administered to the Claimant on August 31, 1987, was caused by his use of controlled substances rather than passive inhalation.

Accordingly, within 60 days of receipt of this decision, Claimant shall notify the Authority whether he will self refer to a proper rehabilitation program. If Claimant re-enters rehabilitation and successfully completes the program, the Authority shall reinstate him contingent upon his testing negative for a body fluids test administered at the time of his return to work physical.

AWARD

Claim sustained in part consistent with this Opinion.

R. B. Birnbrauer *10/7/68*
R. B. BIRNBRAUER
Carrier Member

W. E. LaRue
W. E. LaRUE
Organization Member

S. E. Buehett
S. E. BUCHHEIT
Neutral Member