

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA :
TRANSPORTATION AUTHORITY :
"AUTHORITY" :
 : AWARD NO. 31
vs. :
 :
BROTHERHOOD OF MAINTENANCE :
OF WAY EMPLOYES :
"ORGANIZATION" :
 :

STATEMENT OF CLAIM:

Claim of the Brotherhood (BMWE-88-4-F12) that:

(a) The dismissal of Mason First Class Anthony Giglio for violation of SEPTA Order No. 85-1 is in violation of the Railway Labor Act and the current collective bargaining agreement.

(b) The dismissal of Claimant Giglio violated the guidelines set forth in the decision of the United States District Court of Eastern Pennsylvania in the case involving Union's (et al) vs. SEPTA, rendered by The Honorable Judge Edmund V. Ludwig on January 19, 1988.

REMEDY

The Claimant shall be reinstated without loss of compensation and without loss of seniority and all those other contractual benefits and privileges the Claimant enjoyed prior to his dismissal.

OPINION OF THE BOARD

Claimant, A. Giglio, was discharged on April 5, 1988 for being in violation of Industrial Relations Order No. 85-1 ("85-1"), which concerns the use of, and testing for, intoxicants and/or controlled substances.

The basic facts are not complex. Claimant underwent substance abuse treatment in early 1988, being released from

Zurbrugg Memorial Hospital on January 9, 1988. As a result, Claimant was advised by the Authority's Medical Department that he would be scheduled for periodic follow-up testing. Claimant was given a body fluids test on January 11 and February 24, 1988. Both of these tests produced negative results. However, when a body fluids test was administered on March 31, 1988, the results were positive for cocaine metabolite. These tests were performed and confirmed by Gas Chromatography/Mass Spectrometry. Claimant was subsequently terminated for violation of 85-1.

Industrial Relations Order 85-1 was unilaterally promulgated by the Authority on September 20, 1985. The Order, which was applicable systemwide, states in relevant part:

In accordance with Public Policy and a major commitment of the Authority's Mission to ensure the safety of employees, 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 employees 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 employee suspected of being in violation of this Order may be required to take a blood/urinalysis or other toxicological test(s).

An employee 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 has contended that promulgation of 85-1 was a proper exercise of management discretion, and that Claimant was discharged properly for violation of that Order. The

Organization raises numerous arguments on behalf of the Claimant, including the alleged impropriety of 85-1.

In Award No. 17, issued on October 7, 1988, 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 determined in executive session on October 7, 1988 that the claim must be sustained in part. The Board's reasoning was as follows.

Prior to Claimant's discharge now at issue, he had a verified history of controlled substance abuse and had undergone rehabilitative treatment in the reasonably recent past. The Authority's decision to administer the Claimant a body fluids test upon his return to work was, therefore, proper and the test results could be considered by the Authority. The Board was satisfied that the testing procedures used were adequate, that the results accurately showed that the Claimant had traces of a controlled substance within his system and the trace was a result of use by the Claimant rather than passive inhalation. In addition, Claimant has candidly made admissions to the Authority that he had a relapse and used controlled substances during the time in question. There is no evidence, however, that the Claimant was under the influence of controlled substances while at work or reporting to work.


In these circumstances, the Board found that the Authority could not properly discharge Claimant. The Authority could, however, properly remove the Claimant from work until such time

as he successfully completed additional rehabilitation and tested negative, as the evidence establishes that the positive result of the test administered to the Claimant was caused by his use of controlled substances rather than passive inhalation.

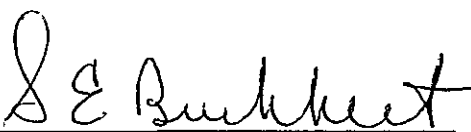
Accordingly, within 60 days of October 7, 1988, Claimant was to notify the Authority whether he would self refer to a proper rehabilitation program. If Claimant re-enters rehabilitation and successfully completes the program, the Authority shall reinstate him contingent upon his testing negative for a body fluids test administered at the time of his return to work physical. If the Claimant earns the right to reinstatement, the Authority will have the right for a reasonable period of time thereafter to require the Claimant to undergo periodic body fluids tests to ensure that his rehabilitation has remained successful.

AWARD

Claim sustained in part consistent with the above Opinion.


R. B. BIRNBRAUER
Authority Member


W. E. LA RUE
Organization Member


S. E. BUCHHEIT
Neutral Member