

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
SOO LINE RAILROAD COMPANY

Case No. 32

STATEMENT OF CLAIM:

Appeal of Claimant Robert J. Beitlich's suspension from the Carrier's service.

FINDINGS:

On January 22, 1996, the Claimant was asked to undergo a random drug/alcohol screening. The screening involved the Claimant providing a urine sample and taking a breathalyzer test. The Claimant made four separate attempts to blow into the breathalyzer machine and each time the machine would not register. The technician finally wrote down on the Claimant's record that he was unable to provide enough oxygen.

Consequently, the Claimant was instructed to appear for a formal investigation to determine whether or not he was guilty of failing to provide an adequate breath sample. The Claimant was found guilty as charged and suspended from the Carrier's service.

The parties being unable to resolve the issues, this matter comes before this Board.

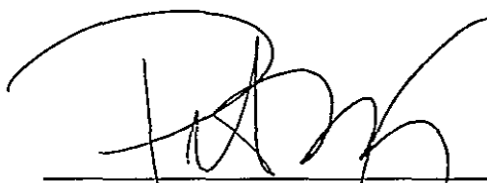
This Board has reviewed the evidence and testimony in this case and we find that the Carrier has not submitted sufficient proof that the Claimant was guilty of any offense justifying discipline. The Claimant submitted himself for the random alcohol test and blew into the equipment provided by the Carrier. That Equipment apparently failed to

register an "adequate breath sample" or enough oxygen to perform its test. The Claimant continued to comply with the various requests of the tester and never indicated that he would not participate in the random testing. A thorough review of the transcript makes it inconceivable that this Claimant acted in any way justifying the imposition of discipline .

The Carrier has the burden of proof to justify discipline in all cases. In this case, this Carrier has not presented sufficient proof that it had just cause to issue discipline to the Claimant for his failure to provide an adequate breath sample on January 22, 1996. Therefore, the claim must be sustained and the Claimant must be made whole for all pay lost as a result of the improper suspension.

AWARD:

Claim sustained. Claimant shall be made whole for all pay lost as a result of the suspension.



PETER R. MEYERS
Neutral Member

Dated: April 29, 1996