

SPECIAL BOARD OF ADJUSTMENT NO. 1127

AWARD NO. 12
CASE NO. 12

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees

vs.

Union Pacific Railroad Company
(Former Southern Pacific Transportation Company-Western Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

DATE: September 17, 2002

DESCRIPTION OF CLAIM:

Claimant Raul Guevara was charged with violation of Carrier Rule 1.6(3), which prohibits insubordination, and Section IX of Carrier's Drug and Alcohol Policy for refusing to submit to a reasonable cause test on September 13, 2001. Following an investigation hearing on October 23, 2001, Claimant was dismissed from all service by notice dated November 12, 2001. At the time of his dismissal, Claimant had some three and one-half years of service. His work record contained no prior similar discipline.

The Claim in this dispute seeks to overturn the discipline and make Claimant whole for all losses.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Board's review of the evidentiary record reveals no procedural shortcomings of significance.

According to the evidence, Claimant says he felt pain in his right arm and shoulder area after driving bolts into place with a sledge hammer near the end of his work shift. He was taken to a hospital where he was x-rayed and given some pain medication. His arm was placed in a sling. He was released from treatment at approximately 6:15 p.m. and driven back to Carrier's City of Industry Yard where his car was parked.

Per the testimony of the Carrier manager who drove Claimant back to his car, Claimant was informed he needed to complete an accident report and submit to a reasonable cause drug and alcohol test. Claimant refused to do so. When the manager informed Claimant that the report and test were required, Claimant walked to his car and left saying words to the effect that he would not comply and that he would get a lawyer to see if the report and test were required.

Claimant acknowledged that the manager requested the accident report and the he did not

complete it at that time because of fatigue and discomfort. Claimant said he would do the report the following day. Regarding the drug and alcohol test, Claimant flatly denies that his manager ever requested him to submit to such a test - he says the subject was never discussed.

In disputes of this kind, the role of this Board is a limited one. We do not sit to weigh the evidence or resolve conflicts between the testimony of Claimant and his supervisor; that is the province of the hearing officer. Instead, our role is appellate in nature; this role limits us to reviewing the record to determine whether procedural requirements have been met and whether the Carrier's discipline findings and decision are supported by substantial evidence in the record.

In fulfilling that role, the Board's review of the record compels it to find that the Carrier's action is supported by substantial evidence. Given that Carrier's policy clearly provides for dismissal where test refusal is proven, there is no proper basis for disturbing the Carrier's action.

AWARD: The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member