

Org. File 1573-57-7830
Co. File TRN 0-5-10

Decision No. 5734
Case 832
Supplemental List No. 91

SPECIAL ADJUSTMENT BOARD NO. 18
(Train Service Panel)

PARTIES TO DISPUTE: United Transportation Union-
Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: Request of Brakeman Greg K. Casassa, Shasta District, Oregon Division, for reinstatement to service and replacement of wage loss resulting from his removal from service on December 23, 1984, and his dismissal from service on January 23, 1985, because of his alleged violation of Rules 801 and 802 of the Rules and Regulations of the Transportation Department, which occurred on December 23, 1984.

The Superintendent reinstated Claimant on June 20, 1985. After passing his physical and proficiency examinations, he reported for service on July 3; therefore petitioner revises the claim to one for wage loss extending from December 23, 1984 through July 3, 1985.

STATEMENT OF FACTS: Brakeman Casassa was working in pool freight service on December 23, 1984. He went on duty at Eugene Yard at 4:00 a.m. and departed on Extra 8509 West, en route Klamath Falls. Shortly before 1:30 p.m. part of this train derailed along the shore of Klamath Lake, near Klamath Falls. The train crew, including Brakeman Casassa, assisted in cleaning the derailment and then brought the head part of the train to Klamath Falls, arriving there at 2:50 p.m. A trainmaster interviewed the crew from 3:20 p.m. until 4:20 p.m. The crew tied up at 4:35 p.m.

Within five to ten minutes of their release from duty the assistant superintendent ordered the trainmaster to summon the crew to the yard office and to ask each of them to submit to a urinalysis. The Claimant returned within an hour and was asked to voluntarily provide a urine sample at a local hospital. The Claimant refused to do so arguing there was no probable cause for the Carrier's request since human failure--in his opinion--was not a factor in the derailment.

The Claimant did indicate he would provide a sample the next day to his own doctor. This was not satisfactory to the Carrier and he was removed from service. Subsequently, the Claimant was sent the notice which reads in pertinent part as follows:

"You are hereby notified to be present at the office of the Trainmaster, Klamath Falls, Oregon, 9:00 a.m. Thursday, December 27, 1984 for formal investigation to develop the facts and place responsibility, if any, in connection with your alleged failure to fill out consent form for Toxicological Test and refusal to take Toxicological urine test at Merle West Medical Center, Klamath Falls, Oregon, as instructed by Trainmaster-Road Foreman of Engines C. J. Maben, at 6:05 a.m. December 23, 1984. You are hereby charged with responsibility, which may involve violation of that portion of Rule 801 reading:

"'Employees will not be retained the service who are careless of the safety of themselves or others, insubordinate . . . quarrelsome . . . or who conduct themselves in a manner which would subject the railroad to criticism.'

"the second paragraph of Rule 801, reading:

"'Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported.'

"and that portion of Rule 802 reading:

"'Indifference to duty, or to the performance of duty, will not be condoned.'

"of the Rules and Regulations of the Transportation Department of the Southern Pacific Transportation Company."

Subsequent to the investigation, the Claimant was dismissed. However, he was reinstated to service on June 20, 1985 without prejudice to his claim for lost wages.

FINDINGS: The Board finds, after hearing upon the whole record and all evidence that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement and it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

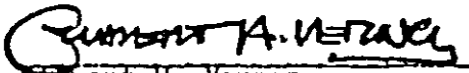
DECISION: At the time of his refusal to provide a urine sample the only reasons given by the Claimant were his belief that the Company had no probable cause since man-failure was not a

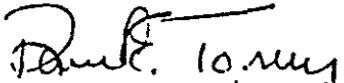
factor and his contention that a test should be done under the supervision of his personal doctor. Thus, the Board is limited to these reasons when considering whether his refusal to comply with the Carrier's directive was justified.

With respect to the probable cause objection, it is the conclusion of the Board that this was not a valid basis, under the facts and circumstances of this case, for the Claimant's refusal. There is no convincing evidence in the record that human failure could have been or was ruled out, at the time testing was directed, as the cause or contributing cause for the derailment. Moreover, it is not ultimately fatal to the issue of probable cause that the crew continued in service after the derailment. In some cases (alcohol) this may affect the validity of test results but it does not nullify the Carrier's right to test for other substances (narcotics etc.) where contemporaneous testing isn't as critical to the validity of the test relative to Rule G.

With respect to the Claimant's insistence that the testing be done under his doctor's supervision, this does not mitigate his insubordination. It is the Carrier's, not the Claimant's, right to establish reasonable rules and issue directives pursuant to those rules. It is the Claimant's obligation to "comply now and grieve later" if he believes the order to be unreasonable. There are very narrow exceptions to this rule and, given there was probable cause for the testing, none apply in this case.

In view of the foregoing, the Claim is denied.


Gilbert H. Vernon
Chairman and Neutral Member


D. E. Torrey, Carrier Member


Glynn Gallagher, Employee Member

Dated this 11 day of May 1987
San Francisco, California.