

Org. File 18E-57-8831  
Co. File TRN T-6-7

Decision No. 5735  
Case 1145  
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 Rodger A. Hawthorne, Tucson Division, for reinstatement to service with seniority unimpaired and replacement of wage loss and productivity credits resulting from his suspension from service on December 9, 1985 and his dismissal from service on January 29, 1986, because of his alleged violation of Rules G and 604 of the General Code of Operating Rules, which occurred on December 1, 1986.

STATEMENT OF FACTS: The basic facts are undisputed. On December 1, 1985, the Claimant was given a call at Carrizozo for 5:00 a.m. on duty to deadhead to El Paso. Claimant was late reporting and two or three unsuccessful attempts were made to get a hold of him. Upon Claimant's arrival at the on duty point, his Conductor observed that he was very unstable and his speech was also incoherent. Claimant's uncoordinated condition was also noted when he attempted to open his locker. The Conductor notified Road Foreman of Engines J. R. Efaw at El Paso who went to Carrizozo and interviewed the Claimant and took him to a medical facility where he furnished a urine sampling for toxicological testing. Upon being notified of the results of the test, Mr. Efaw removed Claimant from service pending formal investigation and decision.

Claimant was formally charged with violation of Rule G by letter dated December 10, 1985. An investigation was held at El Paso on January 27, 1986 at which time the Claimant admitted his guilt. The Claimant was dismissed January 29, 1986.

It is also undisputed that the Claimant has gone through a treatment program and received a favorable reinstatement recommendation from an EAP counselor. However, the Superintendent refused to reinstate the Claimant based on his past record.

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

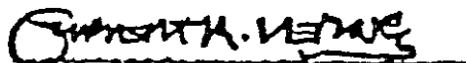
this Board is duly constituted by Agreement and it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.


DECISION: It is the conclusion of the Board that the refusal of the Superintendent to reinstate the Claimant was clearly arbitrary and discriminatory. Under the Carrier's Employee Assistance Program first offenders of Rule G are to be reinstated no sooner than 90 days from dismissal if they receive the favorable recommendation of the EAP Counselor

This Board has supported this policy and the Carrier's efforts in this regard. However, the Superintendent's actions here are contrary to the foundation of the program and put it in jeopardy. A cornerstone of the program is if an employee admits his problem or is turned in, the employee will have a chance-- upon successful treatment--to start anew. Branding a first offender with his past record in spite of his successful efforts to rehabilitate has a chilling affect on the future participation of other employees.

As a remedy, the Claimant is entitled to reinstatement on the same conditional basis as other first offenders who have received favorable recommendations. He is also entitled to backpay from the time of the favorable recommendation (however, no sooner than 90 days from the date of dismissal) to the date of his reinstatement.

The claim is sustained to the extent indicated above.

  
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.