

Org. File 240-57-8803
Co. File TRN L-5-100

Decision No. 5759
Case 1208
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 Dana E. Law, Los Angeles District and Division, for reinstatement to service and replacement of wage loss resulting from his return to dismissed status on February 26, 1986. He was dismissed on January 16, 1985 because of his alleged violation of Rule G of the Rules and Regulations of the Transportation Department, which occurred on December 14, 1984; he was conditionally reinstated on March 5, 1985 and November 1, 1985.

STATEMENT OF FACTS: This case has its genesis in an incident with a mishap involving a shoving of cars off the end of a stub track at "A" yard in Los Angeles. The Claimant was given a urine test which tested positive for the metabolites of marijuana and cocaine. The Claimant was notified and cited for formal investigation by letter dated December 26, 1984. A formal investigation was held at Los Angeles, December 28, 1984 and by letter dated January 16, 1985, Claimant was dismissed for violation of Rule G.

On March 5, 1985, the Claimant was reinstated pursuant to the following agreement:

"Refer to my letter dated January 16, 1985, wherein you were dismissed from service for violation of Rule G of the Rules and Regulations of the Transportation Department. Formal investigation established your responsibility for having used marijuana and cocaine evidenced by the results of a urine drug screen test performed on December 15, 1984.

"It has been agreed that you will be returned to duty on a conditional basis with seniority unimpaired and without compensation for time lost provided you report within thirty (30) days from the date of this letter and that you are agreeable to the following conditions:

- "1. You must totally abstain from alcohol and other drugs.
- "2. You must participate in a rehabilitation program as agreed to with the Employee Assistance Counselor, and attend AA/DA meetings as prescribed and furnish verification of attendance.

- "3. You will submit to random unannounced alcohol/drug tests.
- "4. You must receive clearance from the Medical Department after successfully completing a Company directed medical examination before you will be allowed to markup for service.
- "5. You must refrain from failing to protect your assignment, and failure to report for duty must be substantiated and verified.

"Any violation of the above will result in your RETURN TO DISMISSED STATUS.

"If you are agreeable to the conditions outlined, please sign the attached copy of this letter and also have your union representative sign in the space provided, and return copy to me."

The next relevant development occurred in September 1985. The Claimant refused to furnish a urine sample. According to the terms of the March 5 reinstatement agreement he was returned to a dismissed status.

On November 1, 1985 the Claimant was again reinstated to service on essentially the same basis as he was on March 5, 1985.

On February 14, 1986 the Claimant submitted a urine sample which was positive for cocaine and its metabolite, benzoylecgonine. He was returned to a dismissed status.

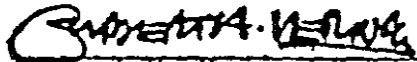
FINDINGS: The Board finds, after hearing upon the whole record and all evidence that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement and it has jurisdiction of the parties and the subject matter, and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

DECISION: The Claimant seeks reinstatement after 3 incidents where he either tested positive for drugs or refused to take a test.

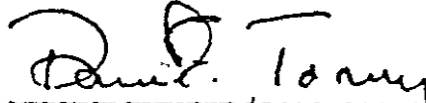
After so many failed chances to gain control of his problem, dismissal is not unreasonable and we cannot disturb the Carrier's decision.

The claim is denied.

Decision No. 5759



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.