

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 452

Case No. 452
UP File 900012

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Union Pacific Railroad
 (Former Missouri Pacific Railroad Company)

Statement

of Claim: 1. Carrier violated the agreement, especially Rule 12,
when System Gang Employee M. J. Howard was dismissed from
service on September 5, 1989.

(2) Claim in behalf of Mr. Howard for wage loss suffered
beginning September 5, 1989, until reinstated with
seniority, vacation and all other rights unimpaired.

Findings: The Board has jurisdiction by reason of the parties
Agreement establishing this Board therefor.

This is fifth in the series of cases presented to this
Board which arose out of disciplinary proceedings because
each charged employee had allegedly failed to comply with
instructions of his supervisors.

The Claimant, System Rail Gang Employee, M. J. Howard,
following a formal investigation held in absentia on August
16, 1989, on the charge of:

"insubordinate when you failed to comply with instructions
given you in a letter dated April 27, 1989 specifically
instruction #3 from Track Supervisor R. C. Callaway..."

Carrier concluded him culpable and dismissed him from
service as discipline therefor.

Said April 27, 1989 letter to the Claimant, in part,
read:

"We have been advised by the Union Pacific Medical Director
that a urine sample taken on April 18, 1989, during your
physical examination tested positive for illegal or
unauthorized drugs. Accordingly the Company Medical
Director has disqualified you from service and notified you
of the availability of the Company's Employee Assistance
Program.

3. If you fail to provide a negative drug test, as set out above, within ninety (90) days from your date of disqualification, or if you fail to complete the Employee Assistance Program successfully, as set out in paragraph 2 above, you are hereby notified that you may be subject to dismissal if it is determined that you failed to follow the instructions in this letter..."

The Claimant, as did all other employees coming under the jurisdiction of Assistant Vice President of Engineering Services, S. J. McLaughlin, received a letter dated April 10, 1989 advising of the Company policy entitled "Union Pacific Railroad Policy and Procedures Governing the Drug Testing Component of Engineering Department Physical Examinations." Said policy, in essence, indicated that should an employee test positive for illegal or unauthorized drugs during the routine periodic physical examination such employee would be medically disqualified from service and instructed that return to service from such disqualification hinged on the employee's ability to demonstrate his fitness for duty in accordance with the instructions within ninety days from the date of the medical disqualification by providing a negative urine sample through a medical facility selected by the Company Medical Director. This 90 day period could only be extended by the employee's entrance into the Company's Employee Assistance Program (EAP) with such program requiring treatment of greater than 90 days.

Said policy further indicated that should an employee fail to become "clean" or enter the EAP within the 90 day period that he would be subject to dismissal if it was determined that the employee had failed to comply with the Company's instructions in this regard. The policy further stated that upon an employee's return to service he would be required to remain drug-free and submit to follow-up drug testing under the auspices of the Union Pacific Medical Director's office for three years from the date of the employee's return to service.

Lastly, said policy indicated that if the employee failed to provide a negative test at any time during this three year period, the employee may be subject to dismissal if it was determined that the employee failed to follow a valid Union Pacific instruction.

In the instant case the Claimant, initially, was medically disqualified because he had tested positive for illegal or unauthorized drugs during his April 18, 1989 routine periodic physical examination. The Claimant then failed to requalify because of his failure to produce a negative urine sample within the prescribed 90 day period. Consequently, the charge of insubordination was brought


against him for failure to comply with the instructions given by (a) the Medical Director and the policy given by the Vice President of Engineering Services, (b) the Medical Director's letter and also his supervisor's letter concerning his positive findings as the result of his April 18, 1989 drug screen test.

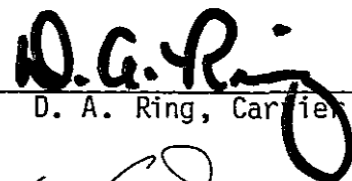
The failure to follow reasonable instructions satisfies the charge of insubordination.


Claimant did not attend the investigation nor did he request a postponement thereof. It, therefore, was held in absentia. However, he was capably represented and he nevertheless is bound by the record that is developed thereat.

The record supports the conclusion that he had a fair hearing, that he was accorded the due process to which he was entitled under Rule 12, and that there was sufficient evidence adduced to support the Carrier's conclusion as to his culpability. The By-Pass Agreement holds no application to a case of this nature. He was medically disqualified and failed to requalify within 90 days or enter the EAP program. The discipline assessed was not unreasonable but was consistent with the announced April 27, 1989 medical policy. In light of the purpose for the policy, the examination and subsequent instructions, this claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


D. A. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued January 25, 1991.