

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 475

Case No. 475
UP File 900325

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

Statement of Claim: 1. Carrier violated the agreement, especially Rule 12, when Trackman Driver W. J. Edwards was dismissed from service on February 28, 1990.

(2) Claim in behalf of Mr. Edwards for wage loss suffered beginning February 28, 1990, 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 the twelfth case in the initial series presented to this Board arising from the Carrier's implementation of its new drug testing screen in periodic examinations.

The Claimant, Track Driver W. J. Edwards, following a formal investigation held, on February 20, 1990, on the charge that he was insubordinate when he failed to comply with the instructions given him in a letter dated October 24, 1989, specifically instruction #3, from Track Supervisor D. R. Robinson, was concluded culpable. He was dismissed from service, on February 28, 1990, as discipline therefor.

The Assistant Vice President of Engineering Services S. J. McLaughlin, on April 10, 1989, issued a policy entitled "Union Pacific Policy and Procedures Governing the Drug Testing Component of Engineering Department Physical Examinations" accompanied by the Medical Department's policy thereon. Such policy indicated that should an employee test positive for illegal or unauthorized drugs during the routine periodic physical examination the employee would be medically disqualified from service and instructed that he would be permitted to return to service only upon his ability to demonstrate his fitness for duty in accordance with instructions that within ninety (90) days from date of his disqualification, he provide a negative urine sample through a medical facility selected by the Company Medical Director. Said 90 day period could only be extended by the employee's entrance into the Company's Employee Assistance

Program when such program required treatment of greater than 90 days.

The policy further indicated that should an employee fail to become "clean" or enter the Employee Assistance Program within said 90 day period that he would be subject to dismissal if it was determined that he had failed to comply with the Company's instructions in this regard. The policy also indicated that upon an employee's return to service that such employee 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 3 years from the date of the employee's return to service. The policy indicated further that if the employee failed to provide a negative test at any time during this 3 year period the employee may be subject to dismissal if it is determined that the employee failed to follow a valid Union Pacific instruction.

The above policy was mailed to the employee's home. It also was read to them by their supervisor.

The instant case resulted from Claimant's medical disqualification because he had tested positive for illegal or unauthorized drugs during his October 12, 1989 routine periodic physical examination. The Medical Director also advised him, furnished him with a copy of his drug screen test and reiterated the governing medical policy. His Supervisor, D. R. Morrison, wrote to him, reiterating the medical policy and specifically advising, in part:

"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 you may be subject to dismissal if it is determined that you failed to follow the instructions in this letter."

The Claimant contrary to the October 20, 1989 instructions neither presented himself for a urinalysis retest within the 90 day period, nor did he enter the Carrier's Employee Assistance Program.

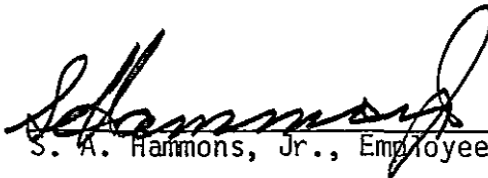
The Claimant was incarcerated December 12, 1989 and was released therefrom January 1, 1990. The 90 day period expired January 23, 1990. The record is clear, including the admissions of Claimant, that he failed within the 90 day period to comply with the valid and proper instructions from the Medical Director, from S. J. McLaughlin, and from his the Supervisor. Consequently, the basis for the Carrier's conclusion that Claimant was insubordinate is well grounded.

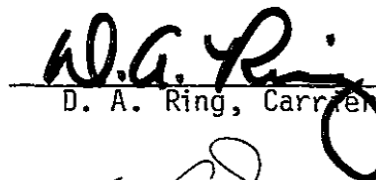
Issues raised as to the propriety and validity of the test, the methodology employed, or the tests conclusions are not timely or properly raised and thus are not properly before this Board.

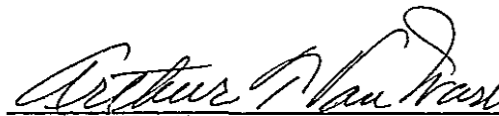
Claimant was accorded the due process to which entitled.

There was sufficient evidence adduced to support Carrier's conclusion. The discipline assessed is consistent with Carrier announced policy and is deemed not unreasonable. 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 March 20, 1991.