

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 493

Case No. 493

File 900453

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

Statement

of Claim: Claim on behalf of Trackman D. L. Maxwell, SSN 446-64-4195, who was dismissed account of illegal or unauthorized drugs, as evidenced by the positive test results of the reasonable cause drug and alcohol test given him April 10, 1990, at Muskogee, Oklahoma, in violation of Rules B and G of Form 7908.

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

The Claimant was notified to attend a formal investigation on the charge:

"...that you allegedly used an illegal or unauthorized drug as evidenced by the positive test result of the reasonable cause drug and alcohol test given you, in accordance with the Union Pacific Railroad Drug and Alcohol Policy and Procedures effective January 16, 1990, on April 10, 1990 at Muskogee, Oklahoma..."

The Carrier concluded him culpable therefrom. He was dismissed from service as discipline therefor.

The Claimant was one of the MofW Employes who were called back to work for the purposes of "taking up." The gang had been put back to work about January 2, 1990. Claimant was injured on January 25, 1990 and was hospitalized for a hernia which he had suffered off duty but re-injured while on duty. The Claimant was told that he had to be off for six weeks. When the Carrier went looking for the Claimant, they discovered that he was in a rehabilitation center at Cushing, Oklahoma. Carrier's EAP investigator said that while they had worked with the Claimant on two other occasions he had failed to finish his program with them. The EAP thought that the Claimant had been removed from service about October 18, 1988.

The record shows that the Claimant was asked to leave the rehabilitation center at Cushing for having been on drugs while in the treatment center. That fact caused Carrier to decide that they should require a drug test of

the Claimant before permitting him to return to work. The test was given and the Claimant tested positive.

The record supports there was a sufficiency of evidence to support Carrier's conclusion as to the Claimant's culpability.

In light of the offense, and particularly Claimant's previous two dismissals, this discipline is deemed reasonable. This claim will be denied.

Award: Claim denied.

*Sol Hammons Jr.*

S. A. Hammons, Jr., Employee Member

*W. A. Ring*

D. A. Ring, Carrier Member

*Arthur T. Van Wart*

Arthur T. Van Wart, Chairman  
and Neutral Member

Issued October 26, 1991.