

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 519

Docket No. 519

File 910051

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12,
when J. B. Arnold was dismissed on August 2, 1990.

(2) Claim on behalf of Mr. Arnold for wage loss suffered,
until reinstated with seniority, vacation and all other
rights unimpaired.

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

The Claimant, Jody B. Arnold, following a formal
investigation on the charge:

"...you were allegedly insubordinate when you failed to
comply with instructions given you in letter dated May 23,
1989, specifically instruction No. 3, from Track Supervisor
L. D. Briggs (copy attached), and Medical Director Dennis
Richling's letter of May 22, 1989..."

As a result of the investigation held in absentia,
Carrier concluded the Claimant to be culpable of the charge
placed against him. He was dismissed from service as
discipline therefor.

Claimant was accorded the due process to which entitled
under his discipline Rule 12. That he chose not to attend
the investigation after several postponements does not
vitiate the due process accorded under Rule 12. He was
properly notified but he chose not to attend. The Claimant
is, of course, bound by the results thereof.

There was sufficient evidence adduced to support the
Carrier's conclusion as to Claimant's culpability. The
record reflects that Claimant had a physical examination on
or about May 1, 1990. The Medical Director's office advised
him that he had failed a drug analysis aspect and gave him a
copy of the analysis. The Claimant was removed from service
and given instructions, pursuant to the Carrier's policy,
instituted April 10, 1989, that he was medically

disqualified and that he must provide a negative urine sample within 90 days of his disqualification. The Claimant failed to provide such a sample thus giving rise to the need for the investigation following which his discharged ensued.

Our Board has denied many similar cases involving the same circumstances, i.e., failing to provide a negative sample pursuant to the April 10, 1989, policy and procedures governing the drug testing component of Engineering Department Physical Examinations.

The Brotherhood of Maintenance of Way Employees took exception to said April 10, 1989 instructions and filed suit in the United States Court for the District of Oregon. However, that case was ultimately resolved by the Organization's dismissing their action against the Carrier because of the RELA's action in accepting the Supreme Court's decision, on June 19, 1990, in the Consolidated Rail Corporation v. RELA wherein the Supreme Court had ruled that Conrail's drug testing program was held to be a minor dispute subject to arbitration under the Railway Labor Act.

In the instant case, the Employees since that dismissal have failed to demonstrate that a negotiated rule had been violated. Or even that a supported past practice had been established which would render the Carrier's policy inappropriate.

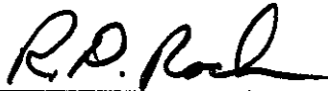
The Claimant, contrary to the Employee's assertion, did receive from the Chief Medical Director the results of the drug test analysis made by the laboratory which reflected that he had, specifically, tested positive on a specified drug.

There was no evidence offered to show that the Claimant, between the time that he failed his test on the initial medical examination and the subsequent holding of the investigation and even up to the hearing before our Board, had taken another test within a reasonable period of the original urine sample taken and that such test had showed negative. Hence, the Carrier concluded that Claimant failed to provide through a Carrier's drug test or by some other means of proper evidence that could be considered by this Board, that he was "clean." Consequently, the Carrier had to conclude that the Claimant's failure to produce a negative urine sample within 90 days or enroll himself in the Carrier's Employee Assistance Program, had clearly supported its conclusion of culpability. The Board must so agree.

The discipline assessed was consistent with the same advice given to all other employees in similar cases before this Board.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


R. O. Rock, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued March 24, 1992.