

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 539

Docket No. 539

File 910263

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 Machine Operator D. L. Zaerr was dismissed on January
14.

(2) Claim on behalf of Mr. Zaerr for wage loss suffered,
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.

The Claimant, Machine Operator Zaerr, was required to
attend a formal investigation, held on December 19, 1990, on
the charge:

"...alleged failure to comply with instructions from Track
Supervisor D. E. Ware in his letters of October 12, 1989 and
January 8, 1990 to remain drug free indefinitely as
evidenced by the positive test results of the follow up drug
test given you on November 13, 1990 at LaMar, Colorado."

The Carrier concluded therefrom that Claimant was
culpable. He was discharged from service as discipline
therefor.

The Union Pacific Railroad introduced a drug policy on
April 10, 1989 and a copy thereof was sent to all employees.
The policy was also read to each employee in the gang by the
gang supervisor. Therein, in part, the employees were
advised that:

"Employees who fail a physical examination may be medically
disqualified by the Medical Director and may not be
permitted to return to work until they are physically fit as
determined by a follow-up examination. I have been informed
by the Medical Director that this will apply to any employee
who fails the drug test component of the examination."

"All employees that fail the drug test will be instructed to
become fit for duty and to remain drug-free after returning
to duty."

The Claimant, on September 26, 1989, was examined on his annual physical. Thereafter, under date of October 12, 1989, he was advised that he had been medically disqualified because his urine sample had tested positive for illegal or unauthorized drugs. The Claimant was advised that he had no more than ninety (90) days from the date of the letter to demonstrate that he had become drug-free by presenting a urine sample which tested negative at a Carrier medical facility which tested negative for illegal or unauthorized drugs and that failure to provide it within 90 days or to complete the Employee Assistance Program successfully you (he) may be subject to dismissal if it was determined that he failed to follow the instructions in the Carrier's letters.

The Claimant was notified on January 8, 1990 that he would be able to come back to work subject to the specific provisions that he would have to follow in order to remain in service, i.e., remain drug free and submit to follow-up drug testing for three (3) years.

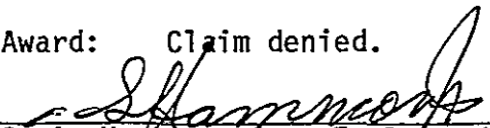
On November 13, 1990, the Claimant was advised that he had been randomly selected for his follow-up drug test. He was taken by Supervisor Darren Faulkner to have his testing done in LaMar, Colorado. On November 20, Supervisor Ware was advised by the Medical Director that Claimant had been removed from service because his urine sample had shown an illegal substance.


In this case, as in the other cases that have come before the Board, the Board is aware of the fact that the individual employee is furnished a written copy of the results of the test of his urine sample. Hence, absent a violation of the chain of custody and/or absent a showing that the test was somehow invalid or lacked credibility, the presumption must be and is that the results are correctly stated in the letter to the employee who had been tested. Hence, any belated Employee efforts made at the investigation concerning the tests, the methodology, cannot be accorded much weight.

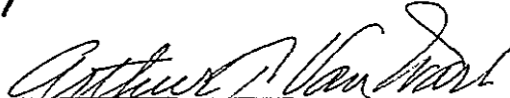
This award concerns the issue of proper compliance with the Carrier's drug policy which this Board has previously found to be reasonable and proper.

In the circumstances prevailing, the Board finds that Claimant was in violation of the Carrier's articulated drug policy. The record supports that conclusion. The Board finds that the discipline of dismissal has been consistently applied in similar cases and it will also be upheld in this case.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


R. O. Rock, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued May 27, 1992.