

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

Case No. 158

Award 141

PARTIES: Brotherhood of Maintenance of Way Employees  
TO :  
DISPUTE: Chicago & North Western Transportation Co.

STATEMENT OF CLAIM: Claim of the System Committee of the  
Brotherhood that:

1. The dismissal of Delfino Sanchez for alleged violation of Rule G was without just and sufficient cause and on the basis of an unproven charge (Organization File 3KB-4446D; Carrier File 81-89-51).
2. Fuel Truck Driver Delfino Sanchez shall be reinstated with seniority and all other rights unimpaired, compensated for all wage loss suffered and made whole for any losses due to the Carrier's unjust dismissal.

FINDINGS:

Claimant Delfino Sanchez was employed by the Carrier as a machine operator at its West Chicago, Illinois, facility.

On October 25, 1988, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charge:

Your responsibility for violation of Rule G and Rule G. (Addition), as contained in Part 1 of the General Regulations and Safety Rules (Revisions & Additions), effective January 1, 1985, while you were employed as a Machine Operator at West Chicago on October 17, 1988.

After two postponements, the hearing took place on November 29, 1988; and on December 9, 1988, the Carrier notified the Claimant that he was guilty of the charge and was assessed discipline of dismissal. Thereafter, the Organization filed a claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of a Rule G violation. Although the Organization argues that there was no probable cause to

test the Claimant because he exhibited no characteristics of being under the influence, the record reveals that the Claimant was operating a vehicle which ran out of gas and later caught fire. Because of that incident, which involved more than Ten Thousand 00/100 Dollars (\$10,000.00) worth of damage to Company property, the Carrier exercised its policy of testing all of the individuals involved in the accident. The Claimant was involved in the incident and therefore was properly tested.

The urine test results revealed that the Claimant had in his system a metabolite of cocaine, specifically benzoylecgonine. According to the Carrier and its drug testing facility, the amount of the benzoylecgonine present in the Claimant's system was sufficient to constitute a positive test, thereby subjecting the Claimant to discipline.


Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.


In this case, the Carrier terminated the Claimant's employment. The termination was based upon the laboratory test confirmation that the Claimant had used a narcotic in violation of the Carrier's rules. This Board has reviewed, on numerous occasions, the problems of drug use by employees in the railroad industry. These types of drug-related offenses have often been considered to be dismissible, even on the first occasion. This Carrier makes a policy of not reinstating individuals who have been involved in a Rule G violation.

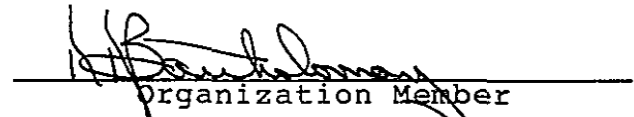
This Board cannot find that the action taken by the Carrier was unreasonable, arbitrary, or capricious. There was a sufficient basis for the test, and the test came back positive. Therefore, the claim must be denied.

AWARD:

Claim denied.

  
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PETER R. MEYERS  
Neutral Member

  
\_\_\_\_\_  
Joan M. Shurman  
Carrier Member

  
\_\_\_\_\_  
H. B. Saulsberry  
Organization Member

Date: 12/17/90