

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY
(former Chicago & North Western Transportation Company)**

Case No. 245

Award No. 217

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

1. The Agreement was violated when, on June 5, 1998, the Carrier dismissed Trackman R. A. Alvarado without the benefit of an investigation (Organization File 9KB-6466T; Carrier File 1157151).
2. As a consequence of the aforesaid violation, Trackman R. A. Alvarado shall now be reinstated to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant R. A. Alvarado was employed by the Carrier as a trackman at the time of the claim.

On January 27, 1998, Claimant R. A. Alvarado signed a Waiver/Agreement Letter in which he agreed to waive his right to a formal hearing, accept discipline of dismissal, and participate in the Carrier's EAP program in connection with the January 22, 1998, charge that he used an illegal or unauthorized drug as evidenced by a positive test result of a follow-up drug test administered to him on January 12, 1998, in violation of GCOR Rule 1.5 and the Carrier's drug and alcohol policy. The Claimant was eligible for return to service on a probationary basis, which was to be for a period of twelve months commencing the first day he returned to service, only after he successfully completed the EAP program. The Claimant was to abide by all the terms and conditions of the agreement during the twelve-month probationary period, which

included being subject to random drug tests; and if he failed to comply and remain drug free indefinitely after returning to service, the result would be his immediate dismissal from the service of the Carrier without the benefit of a formal hearing. The Claimant was reinstated on April 21, 1998. The Claimant underwent a follow-up drug test on June 5, 1998, tested positive, and was dismissed by the Carrier that same day. On June 16, 1998, the Carrier notified the Claimant that his drug test had been verified positive and his dismissal confirmed.

The Organization filed a claim on behalf of the Claimant contending the Carrier violated Rules 1, 4, and 19 of the parties' agreement when it removed the Claimant from the service of the Carrier without any evidence of wrongdoing, proper medical documentation, or test results and without the benefit of a fair and impartial hearing. The Organization contends the Carrier deprived the Claimant of his due process rights.

The Carrier denied the claim contending that the Claimant failed to live up to the explicit terms of the Waiver/Agreement Letter which the Claimant signed, subjecting him to immediate dismissal, and that the Carrier had afforded the Claimant more than sufficient opportunities in previous instances and in this case to change his ways and resolve his substance abuse problem.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the procedural arguments made by the Organization, and we find them to be without merit.

This Board has reviewed the record in this case, and we find that there is sufficient evidence that the Claimant was guilty of testing positive for improper substances for the third time. The record reveals that on January 27, 1998, the Claimant, who had previously tested positive for an illegal substance in his blood, executed a Waiver/Agreement Letter stating that he

concurred with the previous drug testing results and wished to waive his rights to a formal hearing and accept dismissal in connection with those charges of January 22, 1998. He agreed to participate in the Employees' Assistance Program and further agreed that his return to service would be under the terms and conditions as set forth in the Waiver/Acceptance of Discipline-EAP Letter dated January 22, 1998. That letter states, in underlined fashion, that:


... failure to comply with these instructions and/or the terms and conditions of the Companion Agreement during the twelve-month probationary period will result in your immediate return to dismissed status without benefit of a formal hearing.
(Emphasis not added here.)

Consequently, this Board must find that the Claimant agreed that if he were to be found to be in violation of the agreement, he would not even have the right to a formal hearing into the issue. The record reveals that the Claimant once again tested positive for cocaine in his system in June of 1998, well within the twelve-month period. There was a re-test of the split sample, and that also tested positive. Consequently, this Board must find that there was a clear violation of the January 1998 agreement.

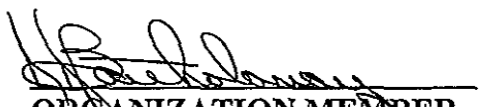
Given the agreement of the Claimant when he was returned to service in January of 1998 that he would forfeit any right to a hearing if he again violated the agreement, this Board has no choice but to deny this claim.

AWARD:


The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 2-8-00



CARRIER MEMBER
DATED: 2-8-2000