

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - D. L. Clark
Award No. 100
Case No. 100

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employes
and
Southern Pacific Transportation Company (Western
Lines)

STATEMENT
OF CLAIM

That the Carrier's decision to dismiss
Claimant from its service was excessive,
unduly harsh and in abuse of discretion, and
in violation of the terms and provisions of
the current Collective Bargaining Agreement.

That because of the Carrier's failure to prove
and support the charges by introduction of
substantial bona fide evidence, that Carrier
now be required to reinstate and compensate
Claimant for any and all loss of earnings
suffered, and that the charges be removed from
his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the
Parties herein are Carrier and Employes within the meaning of
the Railway Labor Act, as amended, and that this Special Board
of Adjustment is duly constituted and has jurisdiction of the
Parties and the subject matter; with this arbitrator being sole
signatory.

The Claimant had been an employe of the Southern Pacific
Transportation Company since April 18, 1984. At some point
prior to March, 1989, he was on leave as a result of being

injured in an off-duty automobile accident. Before he was permitted to return to work, he was required to take a medical examination which included a drug/alcohol screen. The results of the urinalysis showed the presence of cannabinoids and alcohol. As a result of these tests, the Carrier sent a certified letter to the Claimant directing him to appear for a formal hearing at the Office of the Division Engineer, in Oakland, California on April 18, 1988, to determine his responsibility, if any, in the possible violation of Rule G, which reads in part:

Rule G: The use of alcoholic beverages or intoxicants by employees subject to duty, or their possession, use or being under the influence thereof while on duty, or their possession, use or being under the influence thereof while on duty or on Company property, is prohibited.

Employees shall not report for duty under the influence of, or use while on duty or on Company property any drug, medication, or other substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety. Questionable cases involving prescribed medication shall be referred to a Company Medical Officer.

The illegal use, possession or sale on or off duty of a drug, narcotic, or other substance which affects alertness, coordination, reaction, response or safety, is prohibited.

Despite a signed return receipt, which indicated the Claimant received the aforementioned letter, he was not present at the formal investigation. The Union representative who attended, objected to the fact the Carrier chose to proceed with the hearing regardless of the absence of the accused. Beyond

that, there had been no request for postponement either by the Union or the Claimant.

After reviewing the evidence presented at the hearing, the Carrier determined that the Claimant was guilty of violating Rule G and he was dismissed from service by letter dated April 20, 1988.

There is simply insufficient evidence presented to indicate the Claimant was unaware of the charge letter dated April 11, 1988. Afterall, he had taken the medical examination so that he could return to work. He knew he would be returned to work once the medical examination was completed and he was found to be fit. Even if the employe were out of town when the certified charge letter was delivered, it is not conceivable he could not be reached. It is simply not credible that an employe waiting to be called back to work would go out of town without providing the necessary information as to where he could be located. And if he indeed did not leave word as to where he would be, it seems highly probable he had some reason to believe he would not be called back to work. In either case, the Claimant had a responsibility to assure he could be contacted by his employer, if necessary. Especially in light of the fact his scheduled return to work was pending.

The Carrier provided convincing evidence that the Claimant used an illegal substance and alcohol prior to reporting for his medical examination. The presence of alcohol in an amount higher than the Company's allowable standard is particularly damning, in light of the fact, the Claimant knew about the

scheduled medical examination. It would have behooved him to abstain far enough in advance to avoid the presence of alcohol in the urine. His failure to do so, shows a rather cavalier attitude and a disregard for his job.

The Board cannot find anything which would be mitigating in this case. The Claimant, while having worked with the Company for about four years, cannot be considered a long term employee. He did not actively request a postponement of his hearing and he did not bother attending. The actions taken by the Carrier are justifiable under the circumstances.

AWARD

The claim is denied.



Carol J. Zamperini
Neutral

Submitted:

December 27, 1989
Denver, Colorado