Award No. 23
Case No. 24

Special Board of Adjustment No. 956

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes

and

New Jersey Transit Rail Operations, Inc.

STATEMENT OF CLAIM: The dismissal of Trackman O. White was without just and sufficient cause. He shall be reinstated without loss of compensation, seniority or vacation rights and all benefits enjoyed by him prior to dismissal.

FINDINGS: Claimant, a trackman with three years service, was dismissed for being under the influence of alcohol and drugs in violation of Rule G. He was accorded a hearing prior to the assessment of discipline that complied with the awards and practices in this industry. Claimant was well represented throughout the proceedings and afforded a fair opportunity to present his case and to cross examine. No prejudicial procedural defect is disclosed by the record.

The record shows that claimant slipped on a loose grate and tripped over the door sill while entering the Track Headquarters on July 18, 1986. As a result, he fell to the ground and injured his right hand and wrist.

Claimant was driven by Trackman McMahon to Supervisor Ingersoll's office where he was questioned by Mr. Ingersoll. Testimony

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by Supervisor Ingersoll that claimant appeared to be disoriented and his speech slurred is not sufficiently detailed and clear in and of itself to provide a valid reason for a finding that claimant was under the influence of alcohol and drugs.

It was not unreasonable or improper, however, for Mr. Ingersoll to request claimant to take a blood urine screen test on the basis of his observations. Claimant complied with that request and the tests were given to him by Dr. D'Agostino during the morning of July 18, 1986, after his hand had been x-rayed and treated at the doctor's office. The results of the tests showed that on July 18, 1986 claimant was under the influence of cocaine, opiates and THC.

At the hearing, claimant was asked whether he was under the influence of any controlled substances on the morning of July 18, 1986. His reply is as follows:

> "Yes, I was under the influence of controlled substances, but no one asked me what I was coming in for. I was coming in to tell Sam that I was unable to work and I wasn't going to work that day. No one bothered to ask me that period yet, and I think it is unfair in this hearing for no one to ask me that... I came to work with the intention to tell Mr. Watson that I am not able to work and yes I was under the influence and I knew I wasn't able to work."

This record, particularly claimant's admission that he was on Company property during his assigned work hours under the influence of chemical substances, supports Carrier's findings in this matter. There is no indication that claimant was under the protection of any Company rehabilitation program at the time.

Claimant's testimony that he was merely coming in that morning to request time off is not significant in this setting; at any rate, he did not offer that explanation to any supervisor on the day in question.

The use of drugs by railroad employes is a matter of tremendous concern and no ground is perceived for substituting our judgment for that of Carrier in this case.

AWARD: Claim denied.

Adopted at Newark, N.J. July 1, 1987.

Harold M. Weston, Chairman

Carrier Member

Employee Member