

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA :
TRANSPORTATION AUTHORITY :
"AUTHORITY" :

AND :

BROTHERHOOD OF MAINTENANCE :
OF WAY EMPLOYES :
"ORGANIZATION" :

AWARD NO. 15

STATEMENT OF CLAIM

Claim of the Brotherhood (BMWE-86-23-F12) that:

The dismissal of General Track Helper M. Johnson was arbitrary and capricious and without just and sufficient cause.

REMEDY:

The Claimant shall be reinstated without loss of compensation and without loss of seniority and other contractual benefits and privileges the Claimant enjoyed prior to his dismissal.

OPINION OF THE BOARD

Claimant, M. Johnson, was discharged on September 2, 1986 for being in violation of Industrial Relations Order #85-1, ("85-1") which concerns the use of, and testing for, intoxicants and/or controlled substances.

The basic facts are not complex. Claimant was a track general helper. On August 25, 1986 he was reinstated following a previous discharge. Claimant reported to his foreman. On August 26, Claimant was required to report to the Authority's medical department for a physical examination. Claimant was required as

part of the physical to take a body fluids test. The test proved positive, as Claimant's system allegedly contained marijuana metabolite. This result was confirmed by a follow-up Gas Chromatography/Mass Spectrometry test. Claimant was subsequently discharged for violation of Authority Industrial Relations Order #85-1.

Industrial Relations Order 85-1 was unilaterally promulgated by the Authority on September 20, 1985. The Order, which was applicable systemwide, states in relevant part:

In accordance with Public Policy and a major commitment of the Authority's Mission to ensure the safety of employees, the public, and passengers, this Order supplements the current Rule Books, Orders, or Labor Agreements governing the use of intoxicants and/or drugs.

Because of the unpredictable residual effects of certain intoxicants and/or controlled substances, the presence of intoxicants or controlled substances in employees off-duty but subject to duty or reporting for duty; on the Authority property or in recognizable uniform; or in possession of, while on duty; is strictly prohibited and is a dischargeable offense. Any employee suspected of being in violation of this Order may be required to take a blood/urinalysis or other toxicological test(s).

An employee found to be under the influence of, or, so tested, whose test(s) results show a qualitative and/or quantitative trace of such material in his/her system shall be discharged from Authority service.

The Authority contends that promulgation of 85-1 was a proper exercise of management discretion, and that Claimant was discharged properly for violation of that Order. The Organization raises numerous arguments on behalf of the Claimant including, the alleged impropriety of 85-1.

In Award No. 17, issued on October 7, 1988, the Board set forth guidelines concerning how it will consider certain cases arising under 85-1. Applying those principles to the facts of this case, the Board determined in executive session on October 7, 1988 that the claim must be sustained in part. The Board's reasoning and decision was as follows.

The Board found it unclear from the record evidence whether or not the Claimant was properly administered a body fluids test upon his return to work on August 26, 1986. While the propriety of the test is in dispute, the Board was satisfied that the testing procedures used were adequate, that the results accurately showed that the Claimant had traces of a controlled substance within his system and that the trace was a result of use by the Claimant rather than passive inhalation. There is no evidence, however, that the Claimant was under the influence of controlled substances while at work or reporting for work.

In light of all these circumstances, the Board concluded that the Claimant should be permitted to report back to work sometime between October 7 and November 7, 1988. Upon reporting, the Claimant was to be given a return to work physical, which would include a body fluids test. If the test result proved negative, the Claimant would be permitted to return to work, and would not thereafter be subjected to random testing. The Board further concluded that the Claimant shall not receive back pay for the period of his absence.


957-15

AWARD


Claim sustained in part consistent with this Opinion.



R. B. BIRNBRAUER
Authority Member



W. E. LARUE
Organization Member



S. E. BUCHHEIT
Neutral Member