

SPECIAL BOARD OF ADJUSTMENT NO. 910

PARTIES) UNITED TRANSPORTATION UNION
TO)
DISPUTE) CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

"Request that discipline by dismissal imposed upon Trainman R. H. Roseberry, as a result of the following charge be rescinded, expunged from his record and he be restored to service with seniority and vacation rights unimpaired and that he be compensated for all time and expenses incurred inclusive of Health and Welfare premiums, Reduced Train Crew Allowance and Productivity Savings Sharing Allowance in connection with:

Your responsibility in connection with your failure to comply with the Conrail Drug Testing Policy as you were instructed in letter dated June 15, 1987, and, subsequent letter dated August 4, 1987, from Medical Director Dr. Bishop in that you failed to refrain from use of prohibited drugs as evidenced by the urine sample provided on August 15, 1988, testing positive." (System Docket No. CR-T-5573-D; Central Region: Allegheny Division)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

As a part of a medical evaluation performed on June 4, 1987, the Claimant was required to submit to a drug screen urinalysis. He tested positive for cannabinoids, i.e., marijuana, a narcotic controlled substance.

Pursuant to the Carrier's recognized policies and procedures related to substance abuse, the Claimant was advised by letter dated June 15, 1987 that he was disqualified from service and that he had 45 days from such date of notification, or, to July 30, 1987, to clear his system of the prohibited drug, and that a failure to do so would subject him to dismissal from all service.

The Claimant gave another urine sample for drug testing on July 22, 1987. This sample likewise tested positive for cannabinoids.

The Claimant did, however, subsequently provide a sample that tested negative for substance abuse, and he was advised by letter dated August 4, 1987 that he was qualified for return to service on August 5, 1987. This letter also notified the Claimant that he would be subject to random testing. In this regard the letter from the Medical Director stated:

"During the first three years following your return to work you will, from time to time, be required by me to report to a medical facility for further testing in order to demonstrate that you are no longer using cannabinoids (marijuana) or other prohibited drugs. Should a further test be positive, you may be subject to dismissal by your department for failure to follow proper instructions."

Thereafter, Claimant was advised by letter dated August 14, 1988, which was hand-delivered to the Claimant at 10:25 P.M., to report for a random test at 8:00 A.M. on August 15, 1988. The Claimant reportedly tested positive for the presence of cannabinoids.

The Claimant was therefore directed by notice dated August 25, 1988 to report for a formal hearing. The Claimant acknowledged receipt of the notice, which had been sent via certified mail, on August 26, 1988. However, since the Claimant elected not to attend the hearing, it was held in absentia on August 31, 1988

Following the company hearing, by notice dated September 6, 1988, the Claimant was advised that he was dismissed from all service of the Carrier.

The Claimant initially appealed his dismissal from service on the basis that he was guilty, but that the discipline was excessive, and that he should be given another chance to return to work in view of his past work record as an able and conscientious worker. Further, the Claimant said that a commitment to overcome his problems was demonstrated by the fact that he had contacted and participated in local Alcoholics Anonymous meetings.

Despite the Claimant's contentions, the Employees, on behalf of the Claimant, have maintained to the Carrier's highest designated appeals officer and to his Board that the Claimant was not guilty and that a "false positive" reading may have been received on the Claimant's follow-up drug screen urinalysis. In this regard, the Employees take the position that the urine sample was not handled properly through the chain of custody and that the test results must therefore be considered as inconclusive of any substance abuse by the Claimant.

The Employees also contend that since none of the technicians had been called to testify as to their qualifications, competence and findings that the test result by itself must be considered insufficient to conclusively establish that the substance taken from

the Claimant was, in fact, marijuana.

The Carrier maintained on the property and to this Board that the Claimant's admission of guilt bars a reversal of the discipline assessed and, further, that it should not be required to prove the Claimant's guilt, albeit the Carrier says that the evidence of record substantiates that the Claimant was guilty as charged of substance abuse.

The Carrier also disputes the contention that there had been a failure in the chain of custody procedures with respect to the handling of the Claimant's specimen and the test results. It also disputes the Employee contention that there was a "false positive" determination. In this connection, the Carrier would especially point to the Claimant having admitted to his use of drugs at the time in question. It also offers that all urine samples are given an initial screening, a radioimmunoassay test, and that if the test results show positive above predetermined levels for each substance being tested, then a confirmation is made through a gas chromatograph mass spectrometry (GC/MS) testing procedure. The GC/MS procedure, the Carrier asserts, constitutes a sophisticated means whereby its testing laboratory (Roche Biomedical Laboratories) is able to precisely identify and quantify the presence of the compound in question. It is this quantification which is reported, the Carrier says, as the test result when the initial screening and confirmation tests are positive.

The Carrier also takes the position that the presence at the company hearing of any or all of the individuals involved in the gathering or testing of the Claimant's urine sample would not have changed or otherwise altered the outcome of the tests. In this regard, the Carrier offers that there should be no reason to doubt the veracity of the reports since they were not challenged by the Claimant during the initial appeal hearing.

The Board fails to find that the Carrier may be properly faulted for not having had a technician or someone totally familiar with the chain of custody or testing procedures present at the company hearing to have more specifically identified such procedures or testing methodology. In this respect, it must be recognized that the hearing was held in absentia, and, therefore, no exceptions taken to such Carrier presentations. In any event, we think that the Carrier has nevertheless demonstrated sufficient support of record to show that there was no break-down in the chain of custody handling of the Claimant's specimen and that the testing procedures utilized were specific and controlled to assure a high degree of credibility.

It being evident that the Claimant failed in his obligation to remain free of the use of prohibited drugs in keeping with his conditional reinstatement to service under the Carrier's substance abuse policies and procedures, and the Carrier having a responsibility to provide a safe working environment free of

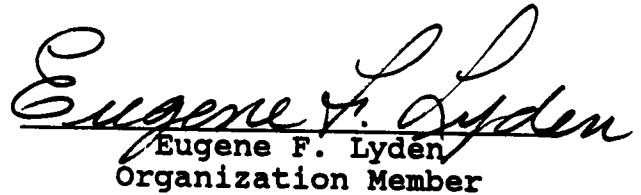
employees who are dependent upon drugs which may impair sensory, mental or physical functions, the Board must conclude that the Carrier had just cause to discharge the Claimant from all its service.

AWARD:

Claim denied.



Robert E. Peterson, Chairman
and Neutral Member


Robert O'Neill
Carrier Member
Eugene F. Lyden
Organization Member

Philadelphia, PA
August 18, 1989