

PUBLIC LAW BOARD NO. 4901

AWARD NO. 74

CASE NO. 74

PARTIES TO
THE DISPUTE: United Transportation Union (CT&Y)

vs.

Atchison, Topeka and Santa Fe Railway
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

DATE: August 31, 1996

STATEMENT OF CLAIM:

Request in behalf of Needles Conductor T. G. Smith, Jr. for reinstatement to the service of The Atchison, Topeka and Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired and with pay for all time lost beginning on May 27, 1994, and continuing until returned to service.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was discharged as a result of a repeat positive test for drugs within a ten-year period in violation of Rule 9.0 of Carrier's Policy on the Use of Alcohol and Drugs. A urine sample collected on April 8, 1994 tested positive for Amphetamine and D-Methamphetamine. Claimant also tested positive for the same drugs in 1992. The test results are not in dispute.

The Organization makes several challenges to Carrier's discipline. It contended that Claimant did not receive a fair and impartial hearing in that the notice of hearing referenced new Rule 1.3.1 effective April 10, 1994. The Organization sees this reference as constituting a fatal flaw in the notice since

Claimant's sample was collected two days prior to the effective date of the rule. A failure to satisfy the burden of proof is also alleged. In addition, a time limits defense, based on Article 13(g)(1)(b) of the Agreement, is alleged since Carrier did not separately notify both Claimant and his representative, in writing, of its disciplinary decision within thirty days. Carrier only notified Claimant's representative. In its submission to this Board, the Organization also contended that Carrier failed to have a testing technician present at the investigation to answer any questions that might have arisen.

From our review of the record of investigation and the handling of the Claim on the property, we conclude that the Organization's challenges lack merit. The new Rule 1.3.1 was merely a re-numbering of the prior rule. It did not change substantively. Even Claimant acknowledged at the investigation that the rule had not changed. Moreover, the rule is in the nature of general preamble language. The specific rule violated, Rule 9.0 of the drug and alcohol policy, was effective throughout the handling of the dispute. It was properly cited in the notice of investigation. Consequently, we find no deficiencies in the notice of investigation.

The Organization's alleged procedural violation must also be rejected. Article 13 does not explicitly provide that Claimant and his representative must be separately notified in writing. Moreover, the parties had a consistent practice for over eleven years at this location of informing only the representative. And although they later agreed to alter that practice in favor of separate notifications, that agreement was without prejudice to the instant Claim. Nothing in that agreement shows that it was to be applied retroactively. Since Carrier's actions on this Claim conformed to the long standing practice of the parties, no procedural violation is found.


The written results of the drug testing were in order. No material breaches of the testing protocols associated with the

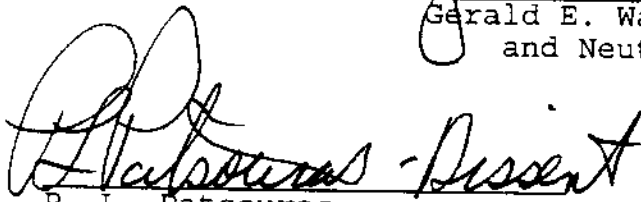
collection, transmission or testing of Claimant's sample were apparent or even alleged. Under such circumstances, it is normally not necessary that Carrier have a technician present at the investigation.


We find the record to contain substantial evidence in support of Carrier's disciplinary action. The Claim, therefore, must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


Milton H. Siegel, Jr.,
Carrier Member

Dated this 31st day of August, 1996 in St. Paul, Minnesota.