

PUBLIC LAW BOARD NO. 4901

AWARD NO. 69
CASE NO. 69

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: July 30, 1996

STATEMENT OF CLAIM:

Request in behalf of Albuquerque Division conductor/Brakeman W. C. Noel 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 December 1, 1991, 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.

On September 16, 1991 Claimant was informed by the Carrier's Medical Director that his recent urine specimen tested positive for cocaine. The Medical Director's confidential letter to Claimant placed him on medical leave of absence, in accordance with Carrier's policy on drug and alcohol usage, and established two conditions for his return to work. Claimant had to receive clearance from the Carrier's Employee Assistance Program (EAP) counselor as well as provide a supervised specimen that tested negative for drugs. The letter advised Claimant that he must accomplish the two requirements within 45 days.

On September 23, 1993, more than two years after Claimant began his medical leave of absence, the EAP Counselor wrote to Carrier's Medical Director to the effect that multiple rehabilitation efforts had failed. Claimant had been unable to remain chemical free for any significant period of time.

Carrier's Medical Director informed Claimant's supervisors on October 4, 1993 who, in turn, set October 28, 1993 for an investigation into Claimant's violation of Carrier rules and policies. The investigation was postponed until November 11th at the Organization's request.

The Organization contends that Carrier failed to hold the investigation within the 30-day time limit of Article 13 of the Schedule Rules. It says the investigation should have been held within 30 days of the end of the 45-day period established in the Medical Director's letter -- not nearly two years later.

The nature of the Carrier's drug rehabilitation program is to confidentially place an affected employee on medical leave of absence. The employee's operating supervision has no official knowledge of the reasons for or the length of the leave.

While the normal timeframe for rehabilitation under Carrier's policy is 45 days, this is not a collectively bargained time limit. Indeed, employee organizations often contend that 45 days is not a sufficient period of time in which to turn drug abusers around. In this case, after the 45-day period elapsed, rather than eject him from the program at that time and terminate his employment then, Claimant's medical leave was extended to allow for repeated efforts to secure his rehabilitation and return him to work. These extensions were voluntarily. At no time did he object to the EAP counselor's continuing efforts. Nor did the continuation of the rehabilitative efforts beyond the 45-day period prejudice Claimant in any way. It cannot be said that the EAP counselor did not go the extra mile with Claimant.


It is unfortunate the EAP counselor's repeated efforts were unsuccessful. When it became apparent those efforts would not


succeed, Carrier's operating officials were notified. This was when Carrier's operating officials gained first knowledge of Claimant's failure to abide by Carrier rules and policies. From this date, Carrier officials properly acted within the strictures of the Schedule Rules. The Organization's contention of a time limits violation must, therefore, be rejected.

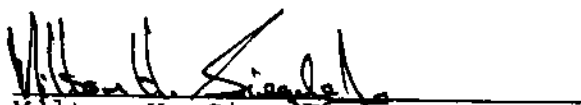
The Organization also asserted that Claimant was not afforded a fair and impartial investigation and that he was prejudged. After careful examination of the record, we find no evidentiary support for these contentions. The Claim, therefore, must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


Milton H. Siegers, Jr.,
Carrier Member

Dated this 30th day of July, 1996 in St. Paul, Minnesota.