

PUBLIC LAW BOARD NO. 4901

**AWARD NO. 153
CASE NO. 153**

**PARTIES TO
THE DISPUTE:**

United Transportation Union
vs.
Burlington Northern Santa Fe Railway Company
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

DATE: September 1, 2000

STATEMENT OF CLAIM:

"Request in behalf of Los Angeles Division Switchman J. P. McAndrews Jr. for the removal of the level 6 dismissal from service and his alleged violation of Rules 1.3.1 and 1.13 of the General Code of Operating Rules, Third Edition, effective April 10, 1994, and Rules 1.1 and 1.5, Safety and General Rules for all Employees, Form 2629 Std., effective September 30, 1994, and Rules 6.2 and 12.0 Santa Fe Policy on the use of Alcohol and Drugs, January 1, 1995, Edition from his personal record and that he be reinstated to the service of The Atchison, Topeka and Santa Fe Railway Company, with seniority and all other rights unimpaired and with pay for all time lost including the payment of Health and Welfare Benefits beginning on May 22, 1995, 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.

A urine sample submitted by Claimant on May 12, 1995 tested positive for cocaine metabolites. At the time his urine sample was submitted, Claimant was a probationary employee. He had been hired on March 27, 1995. Claimant was discharged following an investigation held July 27, 1995.

While the Organization takes exception to Carrier's disciplinary action in several unique ways, our review of the record reveals substantial evidence in support of the discipline and no procedural deficiencies. The record establishes that Carrier's drug and alcohol policy is a unilaterally promulgated program designed to allow affected individuals who fail drug tests a conditional opportunity to retain their employment. An individual with a first-time positive drug

test is allowed to undergo EAP counselling and treatment. The objective is to ensure an individual has an opportunity to rid himself or herself of the effects of drug usage and to remain drug free thereafter. If, after enjoying that opportunity, the individual again tests positive for controlled substances within a 10-year period, the individual is dismissed. Because the program affords individuals an opportunity to correct their behavior as it does, the reasonableness of the program has been recognized numerous times by this and other Public Law Boards.

In this case, the record shows that Claimant originally tested positive for marijuana usage in June of 1993 in connection with a pre-employment physical examination. As a result, Claimant was medically disqualified for employment and was not hired.

By using family connections, however, Claimant worked through Carrier's EAP counselor to complete a drug treatment program. His objective was to find a program that was low in cost, since he paid for it out of his own pocket, and was also one that would allow him to maintain a relationship with Carrier in hopes of being later re-considered for employment. Claimant completed the treatment program in June of 1994.

As previously noted, Claimant was hired to probationary status in March of 1995. Coincidentally, Claimant completed his probationary period the same day he was notified that his urine sample had tested positive for cocaine. A request re-edtest of the sample produced the same result.

The record shows that Carrier's medical director conferred with Claimant to determine whether the test results could have been skewed by the recent usage of any prescriptions drugs or other medications. After discussing the matter with Claimant and Claimant's dentist, the medical director ruled out the possibility that Claimant had legally ingested cocaine. The dental anesthesia used on May 10, 1995 as well as the topical ointment Claimant had been using just prior to submitting his urine sample were eliminated as legitimate sources of cocaine that might have produced a positive test result.

The Organization's contention that Claimant has not been afforded the benefits of Carrier's drug and alcohol policy lacks merit. While it is true that Claimant was not an employee during his first positive drug test in 1993, the technical distinction surrounding his employment status is of no moment. The critical fact is that Claimant tested positive in a Carrier required drug test in 1993. He thereafter underwent drug treatment. It matters not who paid for the treatment. The critical fact is that Claimant received proper counselling and training regarding the use of controlled substances. Having had the benefit of such treatment, Claimant had no persuasive excuse for thereafter again testing positive.

After stripping the irrelevancies from the facts at hand, the record shows Claimant to have tested positive for controlled substance usage a second time within a ten-year period after having undergone an intervening and appropriate program of drug treatment. Given these factors, we cannot find that Carrier was unreasonable in the administration of its drug and alcohol policy with

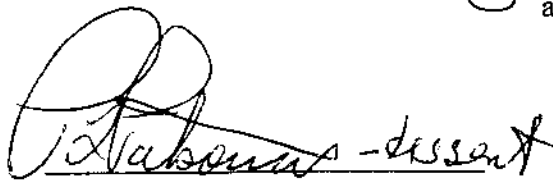
Claimant. Moreover, no collectively bargained provisions of the parties' Agreement have been cited which conflict with Carrier's handling of this matter.


In light of the foregoing, we are compelled to find that substantial evidence supports 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


Gene L. Shire,
Carrier Member