

PUBLIC LAW BOARD NO. 4901

AWARD NO. 66
CASE NO. 66

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: April 11, 1996

STATEMENT OF CLAIM:

Request in behalf of Albuquerque Division Conductor B. M. Jones for reinstatement to the service of The Atchison, Topeka and Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired, but on a leniency basis.

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.

The pertinent facts are undisputed. On March 30, 1993, Claimant tested positive for cocaine usage. This was his second positive test for usage of a controlled substance in a 10-year period. Claimant had previously tested positive for marijuana usage in 1988. Carrier's Policy on the use of alcohol and drugs provides for dismissal whenever an employee tests positive a second time in a 10-year period.

A leniency petition, in practical effect, amounts to an admission of guilt as well as an acknowledgment of the appropriateness of the disciplinary penalty. It does not seek to challenge any factual findings or the operative rules. Rather,

distilled to its essence, it asks for a remission of the penalty as an act of administrative grace.

Public Law Board 4516, Award No. 13, involving these same parties, discussed the subject of leniency as follows:

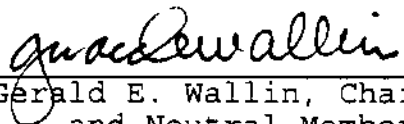
The extension of leniency is generally recognized as the prerogative of management. On this particular segment of the Santa Fe, however, it has been the practice for boards to review requests for leniency to determine their reasonableness in view of the gravity of the offense and appropriateness of permanent dismissal.

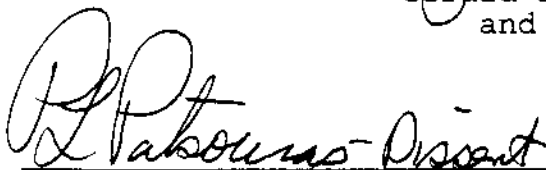
The Organization asserts that Claimant, if reinstated, will perform his duties as expected and will be an asset to the Carrier. It emphasizes Claimant's successful completion of a treatment program following his discharge. However, the record reveals that Claimant has previously received a reinstatement from discharge on a leniency basis.

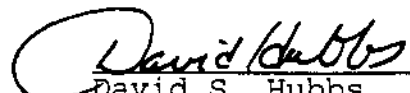
In light of all of the relevant circumstances, we find no proper basis for disturbing Carrier's decision to refuse this leniency request. Accordingly, the Claim must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


David S. Hubbs,
Carrier Member

Dated this 11th day of April, 1996 in St. Paul, Minnesota.