

PUBLIC LAW BOARD NO. 6810

Award No.
Case No. 3

PARTIES TO DISPUTE:
(Brotherhood Locomotive Engineers and Trainmen
(Texas Mexican Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of Engineer Xavier Villarreal, requesting that discipline be reversed, that he be reinstated immediately and compensated for all time lost, that he be made whole with all benefits restored and that his seniority be unimpaired, and that any notation as a result of this incident be removed and stricken from his personal record."

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

In mid-October of 2003, Claimant was found in violation of Rule 1.5 which reads in part as follows:

"...GCOR Rule 1.5 Drugs and Alcohol - The use or possession of alcoholic beverages while on duty or on company property is prohibited. Employees must not have any measurable alcohol in the breath or in their bodily fluids when reporting for duty, while on duty, or on company property."
(Underscoring added)

To retain his seniority, Claimant agreed to a set of conditions sanctioned by the Organization. Parts of that settlement are quoted below:

- "6. Mr. Villarreal must not violate the Carrier's Rule 1.5 or Drug and Alcohol policy during the remainder of his employment with the Carrier.

7. Mr. Villarreal will be subjected to random search of clothing and personal belongings while on company property for drug and alcohol violations."

In a random test conducted pursuant to the aforementioned, Claimant tested .015% and was terminated without a hearing. The Carrier Supervisor who advised Claimant of the results of the random test used an FRA form rather than a straight forward statement regarding the findings.

It is noted, without question, this arbitrator's authority pursuant to the Railway Labor Act is empowered to Interpret Rules and Agreements duly negotiated between the parties.

The personal agreement signed by Claimant to regain his seniority that was sanctioned by his Organization is before this Board for adjudication.

It is also fact that Federal Rules, Regulations, etc., take precedent over any negotiated Rule. The applicable FRA guidelines as edict to all is as follows found in 219.01(Q)(5):

- "(5) If an employee tested under the provisions of this part has a test result indicating an alcohol concentration below 0.02, the test must be considered negative and is not evidence of alcohol misuse. A railroad may not use a federal test result below 0.02 either as evidence in a company proceeding or as a basis for subsequent testing under company authority. A railroad may take further action to compel cooperation in other breath or body fluid testing only if it has an independent basis for doing so."

Clearly, under testing mandated by FRA Rules and Regulations, Claimant would not have been found negligent, and further, Carrier could not proceed to discipline Claimant pursuant to Rule 1.5 on its own using the results of a finding less than 0.02%.

Fortunately for Claimant's continued career with the Carrier, it is the FRA's policy that supercedes Rule 1.5, particularly that portion about no measurable alcohol in the

breath or in their body. If the measurable amount is less than .02, it is not considered a violation.

Although Claimant had been terminated upon receiving the notice of his breathalyzer reading of .015, the Carrier did reinstate Claimant to service, leaving the matter of lost pay to this Board.

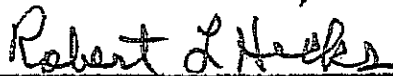
Claimant is to be paid for the time lost in this instance, but in this Board's opinion, the Agreement Claimant signed is still in full force and effect.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member


Marie Geiger, For the Employees


L. A. Lambert, For the Carrier

Dated: April 11, 2005

