

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

In accordance with Rule 7-A-1 appeal of dismissal from service of Selkirk, New York, Electrician W. E. Kuemmerle by the Consolidated Rail Corporation effective by Notice of Discipline dated October 13, 1987.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

An investigation was held on September 15, 1987, to determine whether Claimant failed to comply with the instructions set forth in Regional Medical Director's letter, dated July 10, 1987. Specifically, he was directed in accordance with Company policy to provide a negative urine sample within 45 days of the date of the aforesaid letter at a medical facility referred to by Carrier. Another option provided by Carrier was assistance via the Conrail Employee Counselor to get him into an approved rehabilitation program. This latter option would also extend the time limit for providing a negative screen. Based on the investigative record, Carrier concluded that he failed to comply with the Regional Medical Director's July 10, 1987, instructions, and, thus Claimant was removed from service, effective October 13, 1987.

In defense of its petition, the Organization contended that he complied with the instructions, since he was in the Conifer Park and Alcohol Detoxification Center's program for 30 days. It also charged that Carrier failed to pursue a line of inquiry at the investigation to ascertain Claimant's involvement in said program. It objected to the inclusion of his past disciplinary history into the investigative record, arguing that it was a de facto pre-judgment of Claimant's guilt. In other words, it asserted that it was prejudicial and biased the decision of the trial officer.

In rebuttal, Carrier argued that he did not provide a negative drug screen within 45 days of the July 10, 1987, letter and moreover, notwithstanding meeting with the Counselor, he rejected the recommendations that he obtain treatment at ARMS ACRES, a drug and alcohol detoxification center. It noted that when he returned on July 6, 1987, from off duty due to a non-occupational illness, he apprised Carrier that he had spent 28 days inpatient treatment at the Conifer Park Facility. Since it was company policy for employees returning to work to undergo a physical examination and particularly to take a drug screen test, Claimant was notified that he had tested positive for cannabis. As such, and by letter dated July 10, 1987, he was advised that he would have to provide a negative urine sample within 45 days or follow the other option offered. Since Claimant did not comply with these requirements, Carrier argued that it had the right to convene an investigative hearing. In view of the findings of the investigation, and his past disciplinary record, Carrier asserted that it had just cause to assess the removal action. It further argued that it was not inconsistent with due process standards to introduce into the investigative record Claimant's disciplinary record.

In considering this case, we concur with Carrier's position. Firstly, as to the procedural issue raised we cannot conclude that it was prejudicial and improper to introduce Claimant's disciplinary history into the investigative record. There is no evidence that it was specifically used to determine Claimant's guilt. Rather it was used as a measure in making a determination on the measure of discipline to assess for the proven offense.


Secondly, as to the merits question, the evidence is clear and unambiguous that Claimant failed to comply with the Regional Medical Director's July 10, 1987, instructions and such failure, warrants the imposition of discipline. To be sure, Claimant had spent 28 days inpatient treatment at the Conifer Center, but this rehabilitative sojourn occurred prior to his return on July 6, 1987. Since it was company policy for employees returning to duty to undergo a physical examination, including a drug screening test, Carrier's subsequent actions were not improper, when it directed Claimant to provide a negative urine sample within 45 days or follow the other option. The record shows that Claimant did not avail himself of these options and consequently, he subjected himself to discipline. Accordingly, under these circumstances and additionally given his past disciplinary record, it was neither unreasonable nor an abuse of managerial discretion for Carrier to assess the removal action. For these reasons, we are impelled to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1989.