

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11763
Docket No. 11596
89-2-88-2-82

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 Firemen & Oilers
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Laborer J. Sims, Chicago, Illinois, was unfairly dismissed from service of the Chicago and Northwestern Transportation Company, effective August 31, 1987.

2. That accordingly, the Chicago and Northwestern Transportation Company be ordered to make Mr. Sims whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreement during the time held out of service; and the mark removed from his record.

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 were given due notice of hearing thereon.

This dispute involves an asserted Rule G violation. Said Rule is referenced as follows:

"G. Employees subject to call for duty, reporting for duty, on duty or on Company property are prohibited from using or being under the influence of alcoholic beverages or intoxicants. Possession of alcoholic beverages or intoxicants is prohibited while on duty or on Company property.

Employees shall not report for duty, be on Company property or be on duty under the influence of, or use while on duty or on Company property any drug or other substance that may in any way adversely affect their alertness, coordination, reaction, response or safety. This prohibition includes prescription medications.

The illegal use, illegal possession or illegal sale of any drug by employees while on or off duty is prohibited."

On July 27, 1987, while working on a relay crew, Claimant's engine consist was moved into Global One Yard in Chicago. While dropping off units, Claimant and his engineer backed their engine consist through a switch that was improperly lined for their movement. The consist derailed causing an estimated damage of \$11,000 to the engine and switch. Accordingly, consistent with Company policy, both employees were given an ALCO-Sensor and Urine test and Claimant tested positively for cannabinoids on the latter test. The test revealed a finding of 22 nanograms per milliliter. Based on this analysis, Claimant was apprised by letter dated August 6, 1987 that an Investigation would be held on August 12, 1987 to determine his responsibility for violation of Rule G while employed as a laborer on July 27, 1987. The Investigation was postponed at Claimant's request until August 18, 1987 and then postponed again until August 27, 1987. Claimant did not appear at the Investigation, but it was conducted as scheduled and he was later dismissed from service, effective August 31, 1987.

In defense of his petition, Claimant contended that he was not informed of the August 18 and 27, 1987 Investigation dates and thus was unable to present his version of events or refute Carrier's charge and evidence. He also asserted that he did not receive a copy of the Investigative transcript until 57 days from the date of the Investigation. He also maintained that he was not under influence of marijuana on July 27, 1987 and noted in particular that the findings of the urine test were slightly above the normative cut off of 20 nanograms per milliliter. He submitted studies showing the difficulty in correlating the time elapsed since drug use or the effect of the drug (marijuana) with the amount of any given metabolite in the urine. He also observed that an article in a local Spokane, Washington newspaper indicated that pigments in dark skinned people break down into chemical fragments similar to the active ingredient in marijuana.

In rebuttal, Carrier asserted that certified postponement notices were mailed to Claimant on August 12 and 19, 1987 respectively, but said notices were returned unclaimed. It also asserted that he was mailed via certified return receipt a copy of the Investigative transcript and discipline Notice on August 31, 1987, but said materials were not claimed by Claimant at the Post Office. It further argued that the urine testing was consistent with the reasonable cause testing guidelines of the Federal Railroad Administration, since Claimant was involved in a serious costly derailment incident. It observed that the article in the local Spokane, Washington newspaper was irrelevant to the facts herein and noted that the scientific documentation submitted by the Organization were mere opinions. It maintained that the results

of the urinalysis clearly indicated that Claimant was positive for cannabinoids, and, as such, dismissal was inevitable, given Carrier's strict enforcement of Rule G. It also pointed out that Claimant had been assessed several deferred and actual suspensions for past disciplinary infractions.

In considering this case, the Board finds no evidence of procedural irregularities. Claimant had been aware that an Investigation was scheduled and sought postponement of the initial August 12, 1987 Hearing date. He was certainly mindful that a Rule G Investigation would be held fairly soon, but he made no attempt to apprise Carrier of his concerns or whereabouts.

On the other hand, Carrier tried to inform Claimant of the new Hearing dates and did so properly via certified returned receipt mail. It also sent him the Investigative transcript and discipline notice, but without avail. In effect, Claimant never signed for the letters or claimed the transcript and notice of discipline. Conversely, and despite an implicitly shared obligation Claimant made no attempt to keep Carrier informed of his whereabouts. He must bear responsibility for his inactions.

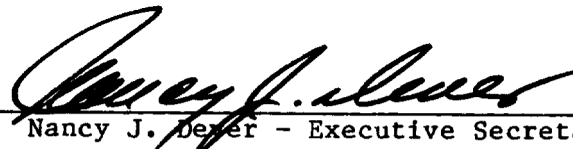
Similarly, we must concur with Carrier on the substantive issue. The evidence of record supports a Rule G violation. To be sure, we agree with the Organization that at times determining whether an employee is under the influence of a drug or alcohol is indeed difficult, specifically, when the substance or alcohol was ingested or in the case of marijuana inhaled a few days or weeks before discovery. There have been several credible studies on this subject and several studies questioning the accuracy of drug testing. In the latter test category, the evidence is still inconclusive. However, in the instant case, Claimant tested positively for cannabinoids and this finding was made immediately after he was involved in a derailment incident. He also refused to take a blood test. More important, the test reflected use of an illegal drug. Since Rule G makes no distinction as to where the use occurred, the positive findings are a clear violation of the aforesaid rule. Upon the record, and given the quantitative verification of drug usage, the Board, of necessity, must affirm Carrier's disciplinary action. Rule G relates directly to rail operations and violations cannot be tolerated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dexter - Executive Secretary

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