

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(Southern Pacific Transportation Company
(Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement, Mechanical Department Electrician K. S. Snyder was unjustly treated when he was suspended from service on July 29, 1988 then dismissed from service on November 28, 1988, following a request for an interdepartmental transfer for which he voluntarily submitted to a company required physical examination that included a drug screen test which allegedly showed positive results for marijuana.

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician K. S. Snyder to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages; including interest at the rate of ten percent (10%) per annum.

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.

The Claimant, who was employed in the Mechanical Department, applied and was accepted for a position in the Signal Department. Such a change required a physical examination, including a toxicological (drug screen) test. The Claimant completed his examination on July 20, 1988. On July 28, 1988, the Carrier was informed by Roche Biomedical Laboratories that Claimant's drug screen showed positive for cannabinoids (marijuana). Claimant was removed from service and a formal hearing was scheduled for August 9, 1988. The Claimant was charged with responsibility in connection with possible violation

of Carrier's Rule G, which pertains to the illegal use, possession, or sale of drugs while on or off duty. The August 9, 1988 hearing was postponed. Claimant requested that another test be performed by another laboratory. This request was granted and a retest of Claimant's urine specimen was performed by BPL Toxicology Laboratory. The second test was positive for marijuana.

A formal hearing was held on November 4, 1988, and on November 28, 1988, Claimant was notified he was dismissed from service having been found guilty of violating Rule G.

We have reviewed the transcript of the hearing and find it was conducted in a fair and impartial manner. No exceptions were taken to the manner in which it was conducted.

The Organization's main thrust in this case is that the Carrier failed to meet its burden of proof, i.e., failed to prove that the specimen tested was actually that of the Claimant. A review of the methods and procedures used by the Carrier and the laboratories in collecting, labeling and testing urine samples indicates that the parties go to great lengths to assure that there will be no mistakes made.

The Claimant alleges he initialed the bottle containing his specimen and that his initials did not appear on pictures taken of the bottle containing his specimen. The procedure used by the Carrier requires the individual's name be on the bottle and that a monitor in the Doctor's office initial the bottle containing the specimen; however, the established procedure does not require the individual being tested to initial the bottle. In a letter dated October 5, 1988, Dr. Hilts, who was personally involved in the matter, outlined, step by step, the procedure that was followed on the day of the test from the time Claimant arrived in his office until the time the bottle was placed in a mailer to be sent to the laboratory. Dr. Hilts stated that his nurse initialed the bottle; however, he gave no indication in his letter that Claimant also initialed the bottle.

After due deliberation we are resolving the conflict with respect to the initials on the bottle in favor of the Carrier. We have concluded that the Claimant did not initial the bottle containing his specimen.

Upon considering all the facts of record presented in this case, we find that the urine tested was that of Claimant and that the Claimant was guilty of violating Rule G. Accordingly, we find that Carrier's dismissal of Claimant was proper.

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Award No. 11893
Docket No. 11835
90-2-89-2-167

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1990.