

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  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

1. That the Consolidated Rail Corporation (CONRAIL) violated the current agreement when on January 3, 1989 Electrician (Lineman) F. L. Reid was improperly dismissed from service at Toledo, Ohio.
2. That Claimant F. L. Reid be restored to service with seniority unimpaired, paid for all wages lost and compensated for all insurance, vacation and other benefits lost and his record cleared.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

As a result of a Trial held on December 20, 1988, the Claimant was dismissed from service. The Claimant was charged with failure to comply with the Carrier's Drug Testing Policy.

A drug screen test given as part of Claimant's return to duty medical examination on September 28, 1987, was positive for Cannabinoids. On September 30, 1987, Claimant was notified he was disqualified for service pending further examination. At the same time Claimant was advised to rid his system of Cannabinoids and other prohibited drugs and to provide a negative urine sample by November 14, 1987. It was also recommended to Claimant that he contact the Conrail Employee Counselor. Early in November, 1987, Claimant provided a negative urine sample and was notified on November 9, 1987, that he was qualified for return to service on such date. The following was included in the letter to the Claimant:

"During the first three years following your return to work you will, from time to time, be required by me to report to a medical facility for further testing in order to demonstrate that you are no longer using Cannabinoids or other prohibited drugs. Should a further test be positive, you may be subject to dismissal by your department for failure to follow proper instructions."

On November 7, 1988, Claimant provided a urine sample that was positive for Cocaine. Trial was held on December 20, 1988, and Claimant was notified under date of January 3, 1989, that he was dismissed from service.

We have reviewed the transcript of the Trial and find that it was conducted in a fair and impartial manner. No exception was taken to the notice of the Trial nor to the positive results of the November 7, 1988 urine sample.

The Employees have made several arguments, taking the position that the charge against the Claimant was not proper, that Claimant was possessed of a disease, that Rule 8-J-1 was violated and that Carrier's action in dismissing Claimant was arbitrary, capricious and excessive.

The Board upon reviewing the record of handling cannot find anything improper with the charge. In fact the charge was clear and precise. While this Board does not consider itself a medical authority it is not aware of any medical authority that considers the use of Cocaine to be a disease. Rule 8-J-1, cited by the Employees, pertains to periodical physical examinations. Claimant's examination on September 28, 1987, was a return to duty examination. Unless otherwise prohibited by Agreement, a Carrier may properly give an employee returning to duty a physical examination.

Conrail employees in February, 1987, were notified of its Drug Testing Policy. Various tribunals have upheld the Policy as being proper and reasonable. See Award 96 of SBA 909, Award 316 of SBA 910, Awards 88 and 92 of PLB 2720, Awards 29 and 32 of PLB 4410 and Second Division Award 11761. Claimant, even if he did not receive the February 20, 1987, letter, as alleged, was made fully aware of the Policy in letters dated September 10, 1987, and November 9, 1987, respectively. Claimant, by testing positive for Cocaine on November 7, 1988, was clearly in violation of Conrail's Drug Testing Policy and the instructions given to him in letter dated November 9, 1987.

Form 1  
Page 3

Award No. 11894  
Docket No. 11843  
90-2-89-2-178

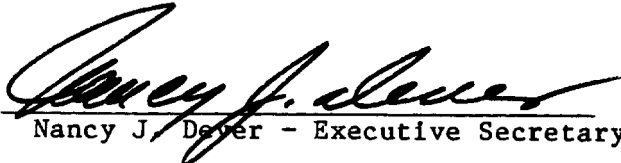
In considering the seriousness of the charge and the facts of record as presented in this case we find that Carrier's dismissal of Claimant was proper and reasonable and that its action was not arbitrary, capricious or excessive.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

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