

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

1. Appeal of dismissal from service of Electrician Robert Perillo by the National Railroad Passenger Corporation, made effective November 13, 1987 by a Notice of Discipline dated November 12, 1987.

2. Be further advised, that we request that the discipline be removed from Electrician Perillo's record and he be restored to service; with seniority unimpaired and with all pay due him from the first day he was held out of service; and with all other benefits that he would normally have accrued to him had he been working in the aforementioned period in order to make him whole.

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.

Claimant was employed by the Carrier as an Electrician at its facility at Pennsylvania Station, New York City, New York.

On September 23, 1987, the Claimant was notified that he was to be held out of service in connection with violation of Rule L of the Amtrak Rules of Conduct. On September 25, 1987, the Claimant was notified to appear for a formal investigation on the Rule L violation as follows:

"Violation of Rule L of the National Railroad
Passenger Corporation (Amtrak) Rules of Conduct
. . .

Specification 1: In that you were directed to go for
a quarterly test on September 23, 1987.

Specification 2: You failed to comply with provi-
sions of PERS-39, Section III, Part B (4) of the
Amtrak Procedures Manual when you failed to dili-
gently pursue and successfully complete a recommended
Rule G recovery program as prescribed by Employee
Assistance Program Counselor Tyronne Beal.

Specification 3: You failed to abide by Stipulations
2 and 4 of the Rule G waiver which you signed on
February 4, 1987."

After one postponement, the Hearing was held on November 6, 1987. On November 12, 1987, the Claimant was notified by the Carrier that he had been found guilty of all charges and was assessed discipline of termination effective November 13, 1987. Thereafter, the Organization filed a Claim challenging his dismissal.

This Board has reviewed the evidence and testimony, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of insubordination. The record reveals that in February 1987, the Claimant admitted his guilt of a violation of Rule G and later signed a Rule G Waiver. The Rule G Waiver required that the Claimant submit to periodic testing for drugs or alcohol for a period of two years. The Rule G Wavier also provided that the Claimant would be dismissed from service if he failed to comply with the agreed-upon stipulations.

The record further reveals that on September 23, 1987, the Claimant was ordered by supervision to undergo his quarterly physical and drug test. The Claimant refused and stated, "I don't have to go." That action of the Claimant was clearly insubordination, for which the Claimant was properly found guilty.

The record also indicates that the Claimant told his General Foreman that he had been smoking marijuana the previous day and that he was worried about taking the test.

Once this Board has determined that there is sufficient evidence in the record to support a guilty finding, we next turn our attention to the degree of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

In the case at hand, the Claimant signed a Rule G Waiver and, therefore, was on notice that any violation of the requirements of the Rule G Waiver would lead to his termination. One of those requirements was submitting to periodic drug tests. When he refused, he was insubordinate and in violation of his Agreement. Therefore, the Carrier had every right to terminate his employment.

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 28th day of November 1990.