

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11977
Docket No. 11716
91-2-88-2-210

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

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Illinois Central Railroad

STATEMENT OF CLAIM:

1. That the Illinois Central Railroad violated the current and controlling Agreement between the International Association of Machinists and the I.C. Railroad dated April 1, 1935, as subsequently revised and amended, when it harshly and unjustly disciplined (suspended from service on August 2, pending an investigation and dismissed on August 30, 1988), Machinist Gregory L. Hamilton for alleged use of an intoxicant, etc.

2. That the Illinois Central Railroad reinstate Machinist G. L. Hamilton to service, make him whole for any and all losses incurred as result of the investigation conducted on August 19, 1988, and clear his service record of all reference to the incident.

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 employees involved in this dispute are respectively carrier and employees 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 a Machinist at its Johnston Car Shop in Memphis, Tennessee.

On August 8, 1988, the Carrier notified the Claimant to appear for a formal Investigation in connection with the following charges:

". . . to determine . . .

1. Whether or not you used an intoxicant, a narcotic, or controlled substance, any medication, tranquilizer, sedative, or any combination of the above while subject to duty prior to beginning your 3 p.m. through 11 p.m. shift on August 2, 1988.
2. Whether or not you failed to comply with the Clinical Re-Instatement Contract signed by you dated March 16, 1988.
3. Whether or not you refused to undergo toxicological testing on August 2, 1988, at approximately 3:40 p.m. in violation of the Agreement signed by you dated March 16, 1988."

After one postponement, the Hearing took place on August 19, 1988. On August 30, 1988, the Carrier notified the Claimant that he had been found guilty of the charges brought against him and was dismissed from service effective August 30, 1988. Thereafter, the Organization filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record that the Claimant was guilty of violating the terms of his conditional reinstatement when he refused to undergo toxicological testing on August 2, 1988, after being observed by a company employee as not acting "exactly right."

The record reveals that the Claimant agreed to abstain totally from alcohol and to undergo toxicological testing whenever requested to do so. This refusal is in direct violation of that agreement.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type 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.

The record reveals that the Claimant had serious problems with alcohol and alcohol related offenses. He was returned to work on a leniency basis after signing a Rule G waiver. He did not live up to that Agreement and therefore was terminated. This Board cannot find that the action taken by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the Claim will be denied.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1991.