

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 F. Mowbray by the National Railroad Passenger Corporation effective April 8, 1988.

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 Wilmington, Delaware, Maintenance Facility.

On January 14, 1988, the Carrier notified the Claimant to attend a formal Investigation in connection with the following charge:

"Violation of Rule G of the N.R.P.C. Rules of Conduct which reads: Employees subject to duty, reporting for duty, or while on duty, are prohibited from possessing, using, or being under the influence of alcoholic beverages, intoxicants, narcotics, or other mood changing substances including medications whose use may cause drowsiness or impair the employee's responsiveness.

Violation of that part of PERS 39 which prescribes adherence to the aftercare plan determined by the EAP Counselor.

Specification: That your drug/alcohol testing on December 16, 1987, proved to be positive."

After one postponement, the Hearing took place on February 5, 1988 and continued on March 25, 1988. On April 7, 1988, the Carrier notified the Claimant that he had been found guilty of the charge and was assessed discipline of dismissal. 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 the procedural arguments raised by the Organization are without merit.

First of all, this Board and other Boards have found on several occasions in the past that in a Rule G waiver situation when the employee is found in violation of the waiver agreement because he had drugs or alcohol in his system, an investigation is not even required. This Board has found that Rule G waivers are self-executing agreements, and therefore, if it is proven that the Claimant has not lived up to his part of the bargain and has been found to have drugs or alcohol in his system, he can be returned to discharge status without the necessity of an investigation.

Moreover, in the case at hand, the record reveals that although the investigation that was held was a few days late because of several postponements and other matters, the Claimant was not prejudiced as a result of the delay in the investigation. This Board has held on several occasions in the past that technical violations in the initial scheduling of an investigation will not necessarily result in the reinstatement of the terminated employee.


With respect to the merits, the record is absolutely clear that the Claimant was in violation of his waiver agreement when his urinalysis came up positive for cocaine on his return-to-work physical. That result was a clear violation of his Rule G waiver agreement and authorized the Carrier to reinstate him to discharge status.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:   
Nancy J. Dexter - Executive Secretary

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