

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
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement Mechanical Department Electrician D. A. Bilton was unjustly treated when she was returned to dismissed status on January 4, 1988, following random unannounced toxicological testing on December 12, 1987 after signing a conditional reinstatement on July 31, 1986 with the Southern Pacific Transportation Company (Western Lines).

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician D. A. Bilton 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.

Claimant was employed by the Carrier as an Electrician at its Los Angeles, California, Locomotive Maintenance Plant.

On May 7, 1986, the Carrier notified the Claimant to appear for a formal investigation in connection with violating Rule G of the General Rules and Regulations of the Carrier. A Hearing was held on July 15, 1986, and on July 29, 1986, the Carrier found the Claimant guilty of violating Rule G and dismissed the Claimant effective July 29, 1986.

On July 31, 1986, the Carrier agreed to return the Claimant to duty on a conditional basis, with any violation of the conditions resulting in the return of the Claimant to dismissed status. The Claimant agreed to the conditions. On January 4, 1988, the Carrier notified the Claimant that she had violated Item 1 of her conditional reinstatement when her urinalysis test results tested positive for cocaine on December 12, 1987, thereby resulting in her return to dismissed status. Thereafter, the Organization filed a Claim on Claimant's behalf, challenging her dismissal.

The Third Division has reviewed this issue before and has found that in a situation where the Claimant was conditionally reinstated and agreed to undergo testing in the future and to be returned to dismissed status as a result of a positive drug or alcohol test, it is a self-executing result and no Investigation is required by the Agreement. (See Third Division Awards 28361 and 28059). This Board once again concludes that in a case where a Claimant is dismissed and then conditionally reinstated whereby the Carrier agrees to return the Claimant to work and the Claimant agrees not to use drugs, the Claimant's violation of that Agreement in the future affords the Carrier the right to return the employee to dismissed status without an Investigation because the Claimant has already been dismissed and the discipline Rules are inapplicable.

As the Third Division stated in the recent Award 28361, this Board must always assure itself that its decisions protect the Agreement rights of the parties and the Carrier must have the facts to support its actions. This Board has reviewed the record in this case and we find that the facts are there and that the Carrier's action was fully warranted. On July 31, 1986, the Claimant agreed in writing to be returned to work on a conditional basis with several stipulations. On December 12, 1987, the Claimant's drug test came back positive for cocaine. The Carrier had a sufficient basis on which to return the Claimant to discharge status. Therefore, the Claim must be denied.

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 30th day of January 1991.