

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
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement, Mechanical Department Electrician M. J. Conrad was unjustly treated when he was returned to dismissed status on October 24, 1990, following toxicological testing.

2. That accordingly the Southern Pacific Transportation Company be ordered to restore Electrician M. J. Conrad 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.

The Claimant was employed as an Electrician at Carrier's Roseville Locomotive Repair Facility. Claimant was dismissed from service on March 17, 1988, for violation of Carrier's General Rule G, reading in part, as follows:

"The use of alcoholic beverages or intoxicants by employees subject to duty...or being under the influence thereof while on duty or Company property is prohibited."

Under date of November 11, 1988, the Carrier offered the Claimant a conditional reinstatement. Three of the conditions were:

- "(1) You must totally abstain from alcohol and other drugs.
- (3) You will submit to random unannounced alcohol and/or drug test for at least two (2) years.

* * *

If you violate any of the above conditions, you agree that you are waiving your right to a formal investigation to determine if you violated any of these conditions and you may be placed in RETURNED TO DISMISSED STATUS immediately."

(Emphasis added)

The Board takes particular note of the fact that Claimant agreed to waive his right to a formal Investigation if he violated any of the conditions listed in the November 11, 1988 Letter-Agreement.

During the morning of October 17, 1990, the Claimant was observed to be apparently under the influence of alcohol. Subsequently the Claimant submitted to toxicological testing at Roseville Community Hospital. Claimant tested positive for alcohol at a level of .165. Under date of October 24, 1990, the Claimant was notified that he had tested positive for alcohol on October 17, 1990, therefore, he was returned to dismissed status immediately.

The fundamental issue raised by the Organization in this case is that the Claimant was not afforded a fair and impartial Investigation under Rule 39 prior to being returned to a dismissed status. This same issue with the same parties and same Rules was before this Board in Second Division Awards 11976 and 11996. In these Awards, which we consider to be well-reasoned, the Board concluded:

"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 him to dismissed status without an Investigation because the Claimant has already been dismissed and Rule 39 is inapplicable."

We likewise reach the same conclusion, as above stated.

In the above mentioned Awards and in Third Division Award 28361 it was held that the Carrier must have the facts to support its action. In the instant case the Carrier had the necessary facts to support its action. (The facts in this case are not in dispute.) The facts indicate that the Claimant clearly violated the terms of the November 11, 1988 Letter-Agreement when he tested positive for alcohol (level of .165) on October 17, 1990.

Based on the record in this case the Carrier's action of returning the Claimant to a dismissed status without an Investigation was proper and justified.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1992.