

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12744
Docket No. 12643
94-2-93-2-3

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen/Transportation
(Communications International Union
(
(the Denver & Rio Grande Western Railway
(Company

STATEMENT OF CLAIM:

- "1. That Carman J. R. Truvillo was unjustly discharged from the service of the Denver & Rio Grande Railroad Company in violation of the rules of the controlling agreement, as a result of a formal investigation held on September 13, 1991.
2. That accordingly, Mr. Truvillo be reinstated to service with pay for all time lost and all rights and benefits unimpaired."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all of the evidence, finds that:

The carrier or carriers and the employee 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.

On September 6, 1991, Claimant was notified of an investigation, to be held September 13, 1991, concerning Claimant's failure to pass a drug screen on August 23, 1991. Claimant was held out of service pending the investigation. The investigation was held, as scheduled, and on September 20, 1991, Claimant was dismissed from service.

The Organization contends that Carrier violated the controlling agreement by holding Claimant out of service pending the investigation. The Organization further argues that Carrier failed to prove that the urine specimen which tested positive for Cocaine was, in fact, Claimant's specimen. The Organization notes that Claimant denied using drugs and alcohol and that Claimant was aware that he was subject to random testing at the time and would have been foolish to use drugs or alcohol.

Carrier contends that the evidence properly documented the chain of custody from collection of Claimant's urine sample through testing and established that the specimen which tested positive was Claimant's. Carrier further argues that the test proved conclusively Claimant's violation of Carrier's Rule G and Claimant's reinstatement agreement. Finally, Carrier contends that it acted within its rights in removing Claimant from duty.

On December 5, 1990, as part of a return-to-duty physical examination, Claimant was given, and failed, a drug screen. Consequently, on December 11, 1990, Claimant was notified of his positive drug test and directed to contact Carrier's Employee Assistance Counselor within seven days. Claimant did so and entered Carrier's Employee Assistance Program.

On February 16, 1991, Claimant agreed to a Letter of Understanding providing for his return to service on a twelve month probationary basis. During the probationary period, Claimant was subject to random drug and alcohol testing and to removal from service in the event of a positive test. On August 23, 1991, Claimant tested positive for Cocaine.

The Board finds that Carrier did not violate the Agreement by holding Claimant out of service pending the investigation. Rule 32(A) expressly authorizes Carrier to hold employees out of service pending investigations for very serious offenses. Furthermore, Claimant's Letter of Understanding also provided that a positive test would result in Claimant's being held out of service.

We have reviewed the record and, based on that review, find that substantial evidence supports the conclusion that Carrier proved the charges against Claimant. Although Claimant denied using drugs and urged that the sample tested could not have been his, the documentary evidence fully established the chain of custody from sample collection through testing. There is no evidence in the record which would render the documentation suspect. Claimant's denials do not justify rejecting the finding made on the property which is fully supported by the documentary record.

Carrier proved that Claimant tested positive for Cocaine in a properly conducted drug screen, despite Claimant's having agreed in a Letter of Understanding to remain drug free during his probationary period. Claimant's failure to comply with the Letter of Understanding and Rule G justified his dismissal.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of September 1994.