

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12892  
Docket No. 12861  
95-2-94-2-19

The Second Division consisted of the regular members and in addition Referee James E. Yost when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division,  
(Transportation Communications International  
( Union  
(  
(Southern Pacific Transportation Company  
( (Eastern Lines)

STATEMENT OF CLAIM:

- "1. That the Southern Pacific Transportation Company (Eastern Lines) violated the controlling Agreement, particularly the Reinstatement Agreement of October 22, 1991, and Rule 34, when they arbitrarily withheld Carman Frank A Daigle from service beginning May 18, 1993, without benefit of investigation to determine all the facts account his being medically discharged for return to work.
2. That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to reinstated Carman Daigle to service and to make him whole for seniority rights, vacation rights, all monetary losses, health-welfare benefits, and all other benefits that are a condition of unimpaired employment, commencing May 18, 1993, and continuing until properly restored to service."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 has worked as a Carman for the Carrier since April 6, 1979, and at the time of the occurrence giving rise to this dispute, was working in Carrier's Lake Charles, Louisiana, facility.

On September 19, 1991, Claimant was arrested for possession of crack cocaine. Carrier's supervision met with Claimant when he came to work at 11:00 PM on September 21, 1991. Claimant advised the supervisors that his car was stolen on September 19, 1991, and he had hitched a ride in a Ford pickup truck driven by a Mr. Frank Wallace whom he did not know. While riding in the truck, it was stopped by the Lafayette Police and searched with the result that a crack pipe and a small amount of crack cocaine were found. Claimant also advised that his car was recovered the following day (September 20) and returned to him.

At the conclusion of the meeting, Claimant was advised that he could not return to work until the drug possession charge was cleared up. Claimant was instructed to report to the supervisors office on Monday, September 23, 1991, at 10:00 AM and bring his paperwork from the police.

Claimant failed to show on September 23, 1991. As of October 4, 1991, Claimant had made no contact with Carrier, and therefore, he was charged with "insubordination" for his failure to report on September 23, 1991, as instructed.

Subsequent to being charged, Claimant wrote Carrier on October 22, 1991, stating:

"In reference to my investigation Oct. 30, 1991. Please be advised that I am waiving my right to the investigation with the understanding that I will be dismissed (sic) from service of the carrier for this violation, but also with the understanding that I will be reinstated provided that I follow a program of an approved treatment center for the problems that I am encountering, that I will be under the guidance of Mr. Gifford Tallmadge employee asst counselor (sic), that I will comply with his instructions and upon Mr. Talmadge (sic) recommendations (sic) I will be granted my rights to return to service based on following the conditions of the program that is outlined, also with seniority unimpaired."

After conferring with Claimant's General Chairman, Carrier granted Claimant's request contained in his October 22, 1991, communication.

Carrier's EAP Counselor Talmadge arranged for Claimant to enter an approved treatment center in New Orleans, Louisiana, known as "Odyssey House" where he resided for 17 months. According to an Odyssey House therapist, Claimant progressed to the 4th level of treatment but was unable to progress any further and was medically discharged to return to work with the admonition that he follow up on an aftercare program of his choice.

Under date of March 22, 1993, Claimant advised Carrier that he had completed treatment at Odyssey House and asked Carrier to arrange an aftercare program for him. Claimant also asked Carrier to advise him of his employment status and job opportunities and options that were available.

On May 18, 1993, Carrier advised Claimant that it could not grant his request because 1) the statement from Odyssey House indicated Claimant did not fully complete the drug rehabilitation program; 2) Claimant had not been released by the Employee Assistance Counselor; and 3) Claimant had not signed a 2 year extension of conditional reinstatement. Claimant was also advised that until he successfully completed a drug rehabilitation program under the guidance of Counselor Talmadge, it could give no consideration to reinstatement.

The record before this Board convinces us that Carrier did not violate the Reinstatement Agreement of October 22, 1991, or Rule 34 of the parties agreement. Claimant, of his own free will, stated "I am waiving my right to investigation with the understanding that I will be dismissed." Having waived his rights to investigation under Rule 34, Claimant cannot be heard to complain.

Claimant, of his own free will, agreed that as a prerequisite to reinstatement he would follow a program of an approved treatment center under the guidance of Employee Assistance Counselor Talmadge and comply with his instructions.

We have reviewed the record before us, which includes the undated statement of Level IV Therapist on Odyssey House letterhead, and are persuaded that Claimant failed to complete the program of Odyssey House, his approved treatment center, or stay in contact with his Counselor, Mr. Talmadge. The record also makes it clear that upon discharge from Odyssey House, Claimant made no effort to seek out his counselor for evaluation and possible recommendation for return to service. Having failed to do so,

Carrier had no obligation under the Reinstatement Agreement to consider his request for return to service.

Contrary to the argument of the Organization, the record before this Board reveals that the responsibility to maintain contact with Counselor Talmadge was that of Claimant, and that he made no effort to fulfill his responsibility.

Claimant is no stranger to discipline. The record before us reveals that he has been dismissed from service four times between March, 1989 and April, 1991, and returned to service on conditional reinstatement agreements.

Claimant's conduct in the instant case considered with his prior record of discipline gives this Board no justification to interfere in any manner with Carrier's treatment of Claimant. The Claim will be denied.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Dated at Chicago, Illinois, this 5th day of June 1995.