

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12920
Docket No. 12807
95-2-93-2-11

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

PARTIES TO DISPUTE: (Sheet Metal Workers' International
(Association
(National Railroad Passenger Corporation
((AMTRAK)

STATEMENT OF CLAIM:

- "1. The Carrier violated the provisions of the current and controlling agreement when they improperly withheld Sheet Metal Worker Shellie Burse from service beginning on May 23, 1991, prior to the results of an investigation allegedly held on August 23, 1991.
2. The Carrier further violated the provisions of the governing agreement when they improperly dismissed Sheet Metal Worker Burse from the service of the Carrier on September 3, 1991.
3. That accordingly, the Carrier be required to compensate Mr. Burse for all time lost; remove any impairment to his seniority; restore Mr. Burse's rights in regards to vacations; reimburse the Claimant or his dependents for all medical and dental expenses; make him whole in regards to life insurance and any other contractual benefits he may have been deprived of while improperly out of 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 were given due notice of hearing thereon.

While on duty and working as a Sheet Metal Worker at the 14th Street Maintenance Facility in Chicago, Illinois, on May 23, 1991, the Claimant was directed to report to the nurse's office for an unannounced use of alcohol test. This test was ordered pursuant to the terms of an understanding which the Claimant had entered into with the Carrier on September 14, 1989 following a past violation of Rule "G" whereby the Claimant had tested positive for the use of illegal drugs, namely, benzodiazepines and cocaine, in a return-to-duty physical.

The September 14, 1989 understanding allowed the Claimant to waive a disciplinary Hearing and to be returned to work on a conditional basis. One condition was that the Claimant would keep his system "free of substances which may impair sensory, mental or physical functions." The understanding also prescribed that the Claimant would be "subject to unannounced drug/alcohol tests" and that if the Claimant had another positive test result that he "will be subject to dismissal."

A company Investigation into the results of the current (May 23, 1991) test findings was scheduled for May 31, 1991, but was postponed due to the unavailability of the Claimant. Two other postponements followed, and the Hearing was finally set for August 28, 1991. The Claimant failed to appear for the Hearing, and it was held in absentia.

The Hearing Officer entered into the record company exhibits that show the Claimant had been duly notified of the time, date and place of the Hearing. A witness for the Carrier testified and presented into evidence support documents to establish that the Claimant had tested positive for the presence of alcohol in his bodily system.

The Claimant was thereafter notified, on September 3, 1991, that he was dismissed from all service of the Carrier.

Both parties raised procedural argument concerning the handling and appeal of the case. These arguments are not found to have been fully or sufficiently joined on the property so as to conclude, as urged on the one hand by the Carrier, that the claim be dismissed for alleged failure of an appeal in a timely manner, or, conversely, as argued by the Organization, that the claim be allowed as presented for an alleged denial of a fair and impartial Hearing.

In this latter regard, it is recognized that the Claimant had been duly notified of the Hearing. Thus, the failure to appear for the Hearing cannot be urged to claim that the Claimant had been denied the benefit of a Hearing, much less be viewed as reason to nullify the proceedings. Further, for whatever reasons the Claimant chose not to attend the Hearing, the transcript supports the conclusion that the Hearing was held in a thorough and proper manner.

Nor does the Board find reason to hold that because the Claimant had executed the Rule "G" Waiver as a result of a prior admission to the use of illegal drugs that it was thereby not appropriate for the Carrier to have subjected the Claimant to an unannounced alcohol abuse test. The September 14, 1989 Rule "G" Waiver understanding clearly prescribes that the Claimant would be subject to both drug and alcohol testing.

The Board also finds no merit in argument that the alcohol screening test results be disregarded or set aside because the Claimant tested positive only slightly higher than the recognized cut-off level. The cut-off level is established for the purpose of taking into consideration all extraneous factors which may have a possible impact upon the integrity of the test results. Certainly, no useful purpose would be served in holding that the maximum or highest degree of permissible contaminates be decided on a case by case basis.

In view of the serious nature of the offense, and in light of the Claimant's past record, the discipline of dismissal from all service was neither arbitrary nor capricious. The Carrier has an obligation to provide a safe work environment for its employees, and a safe and efficient transportation service for its customers and the public. In doing so, the Carrier cannot afford to retain in its employ individuals who exhibit an irresponsible attitude toward the use of alcohol or drugs, especially when continued use follows counsellings and attempts at rehabilitation.

AWARD

Claim denied.

Form 1
Page 4

Award No. 12920
Docket No. 12807
95-2-93-2-11

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 16th day of August 1995.