

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13023
Docket No. 12942
96-2-94-2-91

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

(International Association of Machinists
(and Aerospace Workers
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- "(1) Consolidated Rail Corporation arbitrarily and capriciously suspended and subsequently dismissed Machinist J. Davis from service following trial held on September 2, 1993.
- (2) Accordingly, Machinist J. Davis should be immediately restored to service, paid for all time lost, including overtime, be credited for any and all fringe benefits that would have accrued had not the unjust dismissal occurred and have his record cleared of any reference to the charge."

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.

On August 18, Claimant was notified of a trial to be held on September 2, 1993, to determine his responsibility for violating:

"... Safety Rule 4010 and Rule G of the Rules of the Transportation Department in that your use or being under the influence of an intoxicant, controlled substances, and or drugs, while on duty at Collinwood Diesel Terminal on August 14, 1993, between the hours of 3:17 p.m. and 9:15 p.m."

Following the trial, which Claimant elected not to attend, he was dismissed.

The Organization challenged Carrier on several procedural issues which this Board rejects as being unsubstantiated. The Organization states that Carrier's treatment of Claimant was not too good or it made no effort to test Claimant to determine why he could not talk and why he was acting the way he was on the day he was removed from service.

Testimony during the trial clearly substantiates that Carrier offered Claimant the option of being tested. He first accepted, then later rejected the offer, opting instead to go home. Carrier obliged, sending him home in a limo. If Claimant contends that he was affected by something other than an intoxicant, he should have accepted Carrier's offer of a blood test. Claimant, by refusing, cannot now argue convincingly that his problem was medical.

Claimant's absence at the trial leaves standing, unrebutted, the Carrier witness' testimony. The discipline of dismissal will stand.

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 21st day of August 1996.