

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13161
Docket No. 13064
97-2-95-2-86**

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

STATEMENT OF CLAIM:

“(1) That Consolidated Rail Corporation arbitrarily and capriciously suspended and subsequently dismissed Machinists K. J. Mobley from service following trial held on March 8, 1994.

(2) Accordingly, Machinist K. J. Mobley 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 charges.”

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.

Prior to his dismissal, Claimant was employed as a Machinist on the 3:00 P.M. to 11:00 P.M. shift at Carrier's Juniata Locomotive Shop in Altoona, Pennsylvania. On January 27, 1994, based on a report that Claimant "smelled of alcohol", Carrier directed that he submit to a blood alcohol test, which Claimant agreed to do. The results of the test indicated that Claimant had 62.4 MG/DL of alcohol in his system. Subsequently Claimant was issued a Notice of Investigation regarding his alleged violation of Rule 4010 of the Maintenance of Equipment Safety Rules. Rule 4010 reads in pertinent part as follows:

“. . . When you are reporting for duty or on duty, you are prohibited from having, using, or being under the influence of intoxicants or any improperly used controlled substance...”

At the outset, the Organization has alleged that the trial proceedings in this case were held in a biased and prejudicial manner. The Board has reviewed the entire trial transcript and finds no evidence to support the Organization's contention.

With respect to the merits of this case: Claimant, by his own admission, had consumed an amount of alcohol prior to coming to work on the date in question. Claimant asserted without contradiction that he had not, however, had anything alcoholic to drink within eight hours of reporting to work. Rather, he stated that he been drinking between approximately midnight and 4:00 A.M. (his tour of duty began at 3:00 P.M.). When tested at about 8:45 P.M., Claimant's blood showed an alcohol content of 62.4 MG/DL – legal intoxication in the state of Pennsylvania is 100 MG/DL. As the Board noted in Second Division Award 11530,

“. . . One generally accepted study on the rate at which alcohol leaves the blood concludes that the average rate of decline (the burn rate) is 18.9mg/dl per hour. Other studies report rates slightly slower and some slightly faster, with chronic users appearing to be in the faster category. . . .”

There is no evidence that Claimant had consumed any alcohol while on duty. Yet, Claimant clearly had consumed enough prior to coming to work for his blood test to register as high as it did nearly six hours after he reported for duty. The evidence against Claimant is compelling, and supports Carrier's assessment of dismissal.

It is evident from Claimant's efforts to rehabilitate himself after the incident at issue, and his continued attendance in an AA program, that he has a strong intention to overcome what he himself has referred to as a disease. Moreover, Claimant is a long-standing employee, with 22 years of service. In light of the foregoing, the Board would normally be inclined to consider recommending a conditional reinstatement. However, as the Carrier has noted, Claimant had previously been accorded a leniency reinstatement in connection with a substance abuse arrest and conviction. Under the circumstances, the Board commends Claimant's efforts to deal with his "disease", but it must leave the matter of a "second chance" leniency reinstatement to the discretion of the Carrier.

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 8th day of September 1997.