

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13191
Docket No. 13070
98-2-95-2-99

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: (
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

“(1) That the Chicago and North Western Transportation Company (hereinafter referred to the Carrier) violated the provisions of the Joint Agreement, as amended July 1, 1979, specifically Rule 34, when, subsequent to an investigation held on June 23, 1994 the Carrier unjustly and improperly dismissed from service Proviso Diesel Shop Machinist employee Ethan Loveless (hereinafter referred to as the Claimant).

(2) That accordingly, the Carrier be ordered to:

- (a) Restore Claimant to service with all seniority and vacation rights unimpaired.
- (b) Compensate Claimant for all time lost from service commencing June 28, 1994.
- (c) Make Claimant whole for all health and welfare and insurance benefits lost while dismissed from 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.

At the time of his dismissal, Claimant was employed as a Machinist in Carrier's Proviso Diesel Shop in Melrose Park, Illinois. On March 7, 1994, Carrier notified Claimant that he was being returned to work under its Alcohol and Drug Policy. Among other conditions for his return were the following:

- "1. You will remain abstinent from alcohol and all other prohibited drugs.
2. You will attend a minimum of two support group meetings each week, either Alcoholics Anonymous, or Narcotics Anonymous, or Cocaine Anonymous, and keep a record of this attendance as to date, time and place and signature of either the group secretary or your personal sponsor. This record will be submitted to the Employee Assistance Program monthly in a timely manner.

* * *

In addition, Claimant was informed in that same letter that "Should [he] fail to comply with the following instructions in whole or in part for the two years subsequent to the date of this letter, you will be subject to dismissal for failure to comply with instructions." Claimant agreed to the terms of his conditional reinstatement on March 8, 1994.

On May 20, 1994, the Director-EAP was advised by Glenoaks Medical Center that Claimant had been admitted to that facility on May 2, 1994, and had remained there until May 6, 1994. The Center advised Carrier that Claimant had been admitted for a major depression episode and cocaine abuse. By letter of May 25, 1994, Claimant was directed to report for a formal Investigation regarding his failure to comply with the instructions contained in his March 7, 1994 letter of reinstatement. Following the Hearing, Claimant was notified of his dismissal from Carrier's service.

In his defense, Claimant maintains that the laboratory report from the Glenoaks Medical Center is inaccurate. Specifically, he testified that he told the doctor he had

previously used marijuana and cocaine, but only cocaine registered positive in the urine toxicology analysis. In the medical admission report, however, the attending physician noted that, "The patient identified concerns regarding an impending divorce, and anticipated remarriage, and feelings of regret about having relapsed on cocaine a few days prior to admission." Claimant maintains that if he were using marijuana and cocaine, they would both have shown up in the urine toxicology report; therefore, the urine sample reported by the Medical Center cannot be his.

A careful review of the record and evidence presented fails to support Claimant's defense. The admissions report and release report from Glenoaks Medical Center are consistent and credible. Further, the Board notes that the urinalysis in question was forwarded by the hospital to a second [Smith-Klein] laboratory for confirmation, and the specimen was confirmed positive by Smith-Klein. In light of the Claimant's past record, and his clear understanding of the parameters under which he was reinstated slightly more than two months prior to the incident at issue, the Board does not find a basis for sustaining the instant claim.

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 January 1998.