

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13493

Docket No. 13409

00-2-99-2-1

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: (

(The Burlington Northern Santa Fe Railway Company

STATEMENT OF CLAIM:

“That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the “Carrier”) violated Rule 40 of the Controlling Agreement, Form 2642-A Std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) when it wrongfully and unjustly dismissed Chicago, Illinois Machinist George E. Hall (hereinafter referred to as the “Claimant”) cited in violation of various Carrier Rules for allegedly testing positive for cocaine on October 20, 1997.

Accordingly, we request that for this improper discipline, he be compensated for all lost time and benefits as provided for in Rule 40(I) of the Controlling Agreement, as amended. Additionally, we request that all records and reference to this matter be removed from his personal record.”

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.

The Claimant tested positive for cocaine metabolite on October 20, 1997. Because the Claimant had tested positive on August 11, 1993, he was not given an opportunity for rehabilitation as he had in August 1993. Rather, he was cited for having violated various Rules and dismissed from service following the Investigation.

From the facts, at the time of the test, the FRA has mandated that all inside engine movers were to be randomly tested for drugs. The Claimant testified he knew about the drug tests at least five days in advance of the day he took the test. Because of the advance warning, he testified that he had nothing to worry about, that it would be foolish to indulge knowing he would be tested.

When the test results were positive, he then claimed it must be incorrect, that he did not use cocaine. The representative protested the absence of the technician who conducted the test, they perceived some improprieties of the testing procedure. At 11:12 A.M., the Investigation was recessed until 1:00 P.M., at which time the technician was in attendance and he testified to the procedures followed in testing, labeling, etc., of the samples. The technician's testimony was air-tight.

Later, during the on-property correspondence following the dismissal of the Claimant, they attempted to repudiate the testimony of the technician who they had protested as not being present.

Despite the Claimant's protestation of innocence, the test clearly established the presence of cocaine in the Claimant's system. The handling of the sample was in accordance with the established procedures.

Since this was the Claimant's second positive test for a prohibitive drug during a ten year period, the Carrier's decision to dismiss was based upon substantial evidence and will not be disturbed.

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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 11th day of April, 2000.