

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13620

Docket No. 13522

01-2-99-2-128

The Second Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railway Company (former
(Atchison, Topeka and 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 Kansas City, Kansas Machinist Corey A. Anderson (hereinafter referred to as the ‘Claimant’) for alleged second offense of violation of Carrier rules and policy regarding the use of alcohol and drugs.

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 was first employed by the Carrier as an apprentice Machinist on August 23, 1993 and was subsequently promoted to a Machinist. He resigned on January 7, 1996, and was rehired on October 9, 1996.

On October 29, 1997, the Claimant was advised that he had tested positive for marijuana, in violation of the Carrier Rules. He was medically disqualified from service, entered a treatment program pursuant to Carrier's Alcohol and Drug Use Policy, and returned to duty on January 2, 1998 subject to certain conditions. Among those conditions was that the Claimant would submit to periodic drug and alcohol testing for a period of five years, and if he tested positive a second time, he would be dismissed. The Claimant signed the conditional reinstatement, signifying that he had read the conditions and understood that his compliance was required.

On September 17, 1998, the Claimant was drug tested. The test results were positive for marijuana. As a result, an Investigation was held on October 30, 1998. The Claimant was subsequently dismissed from the Carrier's service.

At the Investigation Hearing, neither the Claimant nor the Organization challenged the accuracy or reliability of the drug testing procedures. In fact, the record shows that the Claimant requested to have a split specimen tested in a different certified laboratory and that test result, too, was positive. In light of the test results, we find that the Hearing Officer could reasonably reject as inadequate the Claimant's assertion that he was "around people who smoke marijuana." The test results here cannot be ascribed to an unsupported claim of inadvertent passive inhalation of smoke when the alternative explanation for such positive results - that the Claimant used marijuana - was the more convincing explanation on this record.

Accordingly, the Board finds that the Carrier has met its burden of proof to support the Claimants' removal. In his short tenure with the Carrier, the Claimant demonstrated that he was unwilling or unable to comply with the Carrier's drug and alcohol policy even after being given a second opportunity to do so. Unfortunately for the Claimant, he violated the conditions set forth by the Carrier with full knowledge that it would result in his discharge. His claim therefore must be denied.

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 4th day of June, 2001.