

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13913
Docket No. 13790
07-1-05-2-42

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

(Brotherhood of Railway Carmen Division of TCU

PARTIES TO DISPUTE: (

(Colorado and Wyoming Railroad Company

STATEMENT OF CLAIM:

- "1. That the Colorado & Wyoming Railroad Company violated the J January 1, 1980 agreement, "Grievances", of which the Brotherhood Railway Carmen on the Colorado & Wyoming Railroad are covered.**
- 2. The Colorado & Wyoming Railroad Company did unjustly, arbitrarily and capriciously withhold Carman Steve Kuhn from service pending investigation on March 30, 2004, and as a result of disciplinary hearing held on April 24, 2004, subsequently dismissed him from service on April 28, 2004.**
- 3. That the Colorado & Wyoming Railroad Company be ordered to compensate Carman Steve Kuhn as follows:**
 - (A). Returned to service with seniority rights unimpaired and paid for all time lost commencing with March 30, 2004 until returned to service.**
 - (B). Made whole for all vacation rights.**
 - (C). Made whole for all pension benefits, including railroad retirement and unemployment insurance.**
 - (D). Made whole for all health, welfare and insurance benefits.**
 - (E). Pay for all holiday, overtime pay and other compensation he would have received from time withheld from service until returned to 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.

The record indicates that Claimant was hired as a Carman on September 6, 1973. He was dismissed on April 28, 2004, after an Investigation was held on April 14, 2004, regarding an alleged failure to report for a random drug screen on March 24, 2004 and possible violation of Carrier's Personal Policy Manual and Drug and Alcohol Policy.

The Carrier stated that Claimant had a history of alcohol abuse which included an accepted and agreed to suspension for violation of Rule G. Additionally, at the time of the incident under investigation he was working under the provisions of a Return to Work Agreement that included random alcohol and drug testing that required him to report to the collection site within two hours without exception. Therefore, his failure to report when called for testing coupled with his work history justifies dismissal.

The Organization argued that Claimant a 30 year railroad employee was satisfactorily progressing in the Carrier sponsored alcohol and drug abuse program and was brought up on charges simply because of his failure to show up for a scheduled alcohol test during his assigned vacation period. Its position is the discipline is unwarranted and Claimant should be reinstated to his former position.

The Board has reviewed the record and finds that Claimant had a troubled past of alcohol abuse which he admitted during the Investigation that included excessive absenteeism over an extended period of time. He checked himself in to a treatment center in September 2003. Subsequently, on October 16, 2003, Claimant

signed a Return to Work Agreement agreeing to abstain from alcohol which included random alcohol and drug testing. The random process required Claimant to call in daily asking the nurse on duty if he should come in to be tested, and if the answer was "yes" he was to report to the site within two hours of the call. There were no exceptions for vacations, weekends, or holidays

Claimant was called while on vacation on March 24, 2004 to report for a random test. On page nine of the transcript Claimant responded as to why he failed to report for the test as follows:

"...over six months I had absolutely nothing to drink. But I was on vacation that week, and I messed up a little bit. And that's how I missed the meeting. But - so yes, I did breach the contract."

In accordance with his own testimony, Claimant admitted the reason why he failed to report for the test was because he was drinking which was a clear violation of the terms of the Return to Work Agreement. The Board concludes that Claimant was guilty as charged.

The only issue remaining is whether dismissal was appropriate. The Board has been advised that the Claimant recently passed away. Because reinstatement has now become a moot issue the discipline will not be disturbed.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 6th day of August 2007.