Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14067
Docket No. 13955
14-2-NRAB-00002-120026

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(BNSF Railway Company

STATEMENT OF CLAIM:

"1. That in violation of the governing Agreement, Rule 40 in particular, the BNSF Railway Company arbitrarily and unjustly dismissed Kansas City, Kansas Mechanical Department Electrician Daniel Haffner from its service as a result of an unfair investigation conducted on April 1, 2011.

2. That accordingly, and as a result of the arbitrary, unjust and excessive discipline assessed Electrician Daniel Haffner, the BNSF Railway Company be ordered to return Electrician Haffner to service immediately and further compensate Electrician Haffner for all lost wages, rights, benefits and privileges which have been adversely affected as a result of the dismissal, and further, all record of this matter be removed from Electrician Daniel Haffner's 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 record informs the Board that after reporting for duty at the Kansas City Yard on March 7, 2011, Electrician Daniel Haffner was asked to submit to random drug and alcohol testing mandated by the U.S. Department of Transportation for certain holders of commercial driver's licenses. Although the Claimant tested negative for alcohol, the urinalysis showed cocaine in his system in violation of BNSF Rule S-28.5. Pursuant to internal policies, those results were reported to the Carrier's Medical Department, triggering an interview of the Claimant by the Carrier's Medical Review Officer, Dr. Tracy Lewis, to determine if there were valid reasons for the positive test results. Finding none, Dr. Lewis offered the Claimant the customary opportunity to have another test done on the split sample by a second lab, and the Claimant accepted the offer. On March 9, 2011, he was then removed from service pending the outcome of the further analysis. After those laboratory results confirmed the initial reports, the Claimant was dismissed from service by letter dated April 7, 2011, triggering the claim now before the Board for final determination.

The transcript of the formal Investigation held on April 1, 2011, establishes in very clear terms that: (1) the Claimant reported for duty and clocked in at the Diesel Services Facility at the Argentine Yard on March 7, 2011; (2) after testing, both the initial and split samples at issue were collected in strict compliance with governing standards; and (3) no evidentiary or procedural issues were presented to suggest problems relating to the collection process, chain of custody issues or other aspects of the collection/laboratory analysis procedures. In his defense, however, the Claimant asserts that he had independently arranged for yet another urinalysis and hair testing after learning of the first positive results, and those results were negative for all banned substances. Additionally, he explains the presence of cocaine in his system on March 7 as entirely accidental. According to the Claimant, he had unintentionally picked up and consumed a beer belonging to someone in an adjacent seat at a Rascal Flatts concert on the night of March 6.

The Board scoured the record in support of reliable evidence supporting the Claimant's defenses. In our judgment, however, both arrive with a faint pulse. As an initial matter, the contention that another independent laboratory commissioned by the Claimant exonerated him of drug ingestion, while an implausible but hardly

inconceivable proposition, was not established by any supporting evidence. No such laboratory results were offered in evidence and, accordingly, the assertion remains just that, an unproven assertion.

The Claimant's allegations of accidently drinking cocaine also appear to tack into strong winds. The Carrier stresses the implausibly of any drug abuser using cocaine in exactly this fashion; conventionally, it asserts, cocaine in the powder form is inhaled or "snorted," mixed into paste and smoked, or injected as a liquid solution. Thus, it argues, the Claimant's variant of "somebody laced my brownies" gets no traction here.

In the judgment of the Board, the Carrier's position is common sensible, although while the proposition of drinking cocaine might be unlikely, it is conceivably serviceable if proven. But here there is an utter absence of detail underpinning the Claimant's alibi. No corroborating witness was offered to confirm the accidental consumption; there is no record, let alone testimony by the Claimant, that he experienced any unusual sensations at the concert; no testimony from his "girlfriend" who witnessed his mistake; and, indeed, not even a written statement from her in corroboration of the Claimant's narrative. If things went down as represented, it was an unpleasantly noirish sequence of events. But with the general theme of accidental consumption venerable enough to be freezer burnt; with potentially supporting evidence accessible but not produced; and in light of the Claimant's relatively short service and record evidence establishing that he had received a 30-day record suspension with a 12-month review period for a Level "S" violation on January 31, 2011, making this his second serious Rule violation within the review period, the Board has no grounds for disturbing the Carrier's judgment. The claim is accordingly 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 22nd day of January 2014.