

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

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE: (

(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM:

1. That the Grand Trunk Western Railroad Company violated the controlling agreement when Carman Jeffrey S. Edwards was unjustly held out of service from January 6, 1986 through February 6, 1986.

2. That the Grand Trunk Western Railroad Company be ordered to compensate Carman Edwards eight (8) hours at the pro rata rate for all time lost from January 6, 1986 to February 6, 1986 and that he be made whole for qualifying purposes in regards to vacation time.

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 employees 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 waived right of appearance at hearing thereon.

Claimant had been on a leave of absence for two months due to an injury. After a return-to-work physical examination, Claimant was permitted to resume his duties on December 19, 1985. Claimant worked until January 6, 1986 when Carrier removed him from service after lab results from the December 19, 1985 exam revealed marijuana in his system. The Organization argues that the Claimant's removal from service was a violation of the Agreement.

It is the position of the Organization that the action of the Carrier was without Rule support and in violation of Rules 26 and 31. Specifically, the Organization argues that Claimant's return to service by Carrier's Medical Department on December 19, 1985 indicates an assent to his ability to safely perform his duties.

It argues inasmuch as Claimant worked thereafter without incident; without assumption that he was under the influence of marijuana; or without accusation thereof, he presented no endangerment to himself, other employees or the public. The Organization further argues that Claimant's removal from service was disciplinary action without Rule support as no Rule is shown prohibiting "drugs in one's system." The Organization further maintains that the drug test given the Claimant as part of his return-to-work physical was not understood to be a requirement based upon the Chief Medical Officer's clarification of July 29, 1982 with respect to "Physical Examinations."

The Carrier argues that the lab work associated with Claimant's return-to-work physical examination indicated use of marijuana. Claimant was removed from service when the lab work was completed and the results were made known to the Carrier. Claimant's removal and return was governed by Rule 124 and based upon his medical fitness for duty. Carrier maintains that Claimant was therefore properly withheld as he "had been using an intoxicating substance which might endanger himself and other employees or public." Carrier argues that a drug screening test is a part of the return-to-work physical when any employee returns from injury, illness or furlough.

On the whole of the record, the Board finds no evidence that Claimant was withheld for disciplinary reasons involving neglect of duty or associated with any Rule involving marijuana. As such, the issue at bar differs from past decisions relied upon by the Organization (i.e., Special Board of Adjustment 925, Award No. 22 and Special Board of Adjustment 884, Award No. 113). Claimant was withheld when results of his return-to-work physical indicated to Carrier's Medical Department a physical condition considered endangering to safety. A careful reading of Rules 26 and 31, finds no violation thereof. There is insufficient evidence of record to indicate that drug screenings were unknown to the Organization, selectively applied, or violative of Agreements. A complete review of all issues raised on the property reveals no evidence of Carrier violation of the Agreement. The Board must therefore deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of February 1988.