

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11654
Docket No. 11471
89-2-87-2-113

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

1. That the Chicago & North Western Transportation Company violated the current agreement dated December 1, 1985, specifically Rule 26(h), when they arbitrarily and capriciously dismissed Electrician R. J. Norton after investigation held August 7, 1986.

2. That the Chicago & North Western Transportation Company further violated the current agreement when they failed to give proper notice as required by the discipline Rule No. 26(c).

3. That the Chicago & North Western Transportation Company again violated the agreement when they failed to provide a fair and impartial investigation as required under the discipline Rule No. 26(a).

4. That the Chicago & North Western Transportation Company reinstate Electrician R. J. Norton immediately and make him whole for any wages or benefits including overtime lost as a result of this most severe and unwarranted discipline.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

On August 4, 1986, at approximately 5:45 A.M., a Shop Foreman observed the Claimant and a co-worker leaving the cab of a stored locomotive. Shortly thereafter, the Foreman entered that cab and detected a substance in the air which he identified as marijuana. Subsequently, the Terminal Superintendent ordered Claimant to undergo urine and blood tests. Claimant repeatedly refused to be tested. Following a hearing, Claimant was dismissed from service for insubordination.

Before addressing the merits of this case, a procedural issue must be decided. The Organization contends that the Hearing was held sooner than provided for in the AGREEMENT. This is true. Nevertheless, at the beginning of the Hearing, the Claimant and the Organization had the opportunity to accept an offer of postponement. They decided to go forward with the Hearing. Based upon a careful reading of the transcript, we find that Claimant was provided a fair and impartial Hearing.

We have considered Claimant's testimony concerning his presence in the cab of the stored locomotive and do not find it persuasive. Claimant had no duties that required him to be in the cab and away from his assigned work. If as he contends, he believed some unauthorized person was in the cab, he should have reported the matter to a Supervisor or to a Security Officer.

Claimant also contends that he did not detect any unusual scent in the air or smoke when he investigated the cab. However, within a short period of time after Claimant left the cab, the foreman detected a "...very strong smell of marijuana..." It is well settled that this Board does not attempt to resolve conflicts in testimony or to pass upon the credibility of witnesses. These are matters for the Hearing Officer to decide. We find no basis for disturbing the Carrier's disciplinary action based upon this conflict in testimony (Second Division Award 11293).

There is substantial evidence, including the physical condition of Claimant, that the Carrier had probable cause to order Claimant to take the urine and blood tests. He was insubordinate in refusing to be tested and severe discipline is warranted. We find no proper basis for the Board to interfere with the discipline imposed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1989.