

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement, Mechanical Department Electrician A. L. Menard was unjustly treated when he was returned to dismissed status on February 23, 1988, following random unannounced toxicological testing on February 3, 1988 after signing a conditional reinstatement on March 25, 1986 with the Southern Pacific Transportation Company (Western Lines).

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician A. L. Menard to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages; including interest at the rate of ten percent (10%) per annum.

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 were given due notice of hearing thereon.

Claimant was employed by the Carrier as an Electrician at its Mechanical Department at Oakland, California.

On December 18, 1985, the Carrier notified the Claimant to appear for a formal Investigation in connection with violating Rule G of the General Rules and Regulations for the Government of Mechanical Department Employees of the Southern Pacific Transportation Company. A Hearing was held on January 14, 1986, and on January 30, 1986, the Carrier notified the Claimant that he

had been found guilty of the charge brought against him and was assessed discipline of dismissal. On March 25, 1986, the Carrier agreed to return the Claimant to duty on a conditional basis, with any violation of the conditions within two years of the date he resumed service automatically returning the Claimant to dismissed status. The Claimant agreed to the conditions. On February 23, 1988, the Carrier notified the Claimant that he had violated his conditional reinstatement on February 3, 1988, when the results from his urinalysis showed the presence of marijuana, thereby resulting in his return to dismissed status. Thereafter, the Organization filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the record in this case, and the fundamental issue raised by the Organization is that the Claimant was not afforded a fair Hearing prior to his final dismissal, after the urinalysis indicating the presence of marijuana. The Organization contends that Rule 39 requires that an employee shall not be disciplined or dismissed without a fair Hearing and that if an employee was unjustly dismissed from service, the employee shall be reinstated with his seniority rights unimpaired. The Organization contends that the Claimant in this case was wrongfully dismissed since the Carrier merely returned him to dismissed status without affording him the appropriate guarantees under Rule 39.

The Third Division has reviewed this issue before and has found that in a situation where the Claimant was conditionally reinstated and agreed to undergo testing in the future and to be returned to dismissed status as a result of a positive drug or alcohol test, it is a self-executing result and no Investigation is required by the Agreement. (See Third Division Awards 28361 and 28059). This Board once again concludes that in a case where a Claimant is dismissed and then conditionally reinstated whereby the Carrier agrees to return the Claimant to work and the Claimant agrees not to use drugs, the Claimant's violation of that Agreement in the future affords the Carrier the right to return him to dismissed status without an Investigation because the Claimant has already been dismissed and Rule 39 is inapplicable.

As the Third Division stated in the recent Award 28361, this Board must always assure itself that its decisions protect the Agreement rights of the parties and the Carrier must have the facts to support its actions. This Board has reviewed the record in this case and we find that the facts are there and that the Carrier's action was fully warranted. On March 25, 1986, the Claimant agreed in writing to be returned to work on a conditional basis with several stipulations. On February 9, 1988, the Claimant's drug test came back positive for cannabinoids. The Carrier had a sufficient basis on which to return the Claimant to discharge status. Therefore, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1991.