

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11981
Docket No. 11739-I
91-2-89-2-48

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

PARTIES TO DISPUTE: (Thomas P. Tierney
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

Reinstatement, seniority unimpaired and compensation for all time lost due to being improperly dismissed as Carman as a result of investigation held on April 20, 1987, in Tucson, Arizona.

Southern Pacific states in its investigation that urine test taken on April 3, 1987, showed that excessive alcohol was in my urine. However, report from Roche Biomedical Laboratories clearly states that specimen was taken on April 2, 1987, and not April 3, 1987. Therefore, there is no way that this urine was mine or the urine that was used in the test could have been mine.

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 a Carman on its Tucson Division, Tucson, Arizona.

On April 14, 1987, the Carrier notified the Claimant to appear for a formal Investigation on the following charge:

". . . violation of Rule G of the General Rules and Regulations, Southern Pacific Transportation Company.

. . . to develop the facts and place responsibility, if any, in connection with your allegedly being under the influence of alcohol while working as carman at Rip Track, on duty time 7 a.m., April 13, 1987, which was confirmed by the evidence of excessive alcohol in your body fluids . . ."

The Hearing was held on April 20, 1987. On that same date, the Carrier notified the Claimant that he had been found guilty of the charge and was assessed discipline of dismissal. Thereafter, the Claimant filed a Claim challenging his discipline.

This Board has reviewed the procedural arguments raised by the Carrier and we find them to be without merit.

With respect to the substantive question, this Board has thoroughly reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of a Rule G violation on April 3, 1987. The record reveals that the Claimant was working on that date and he exhibited some of the characteristics of being under the influence of alcohol, including glassy eyes and unsteady gait. The Carrier ordered the Claimant to take a urine test, and the results of that test proved that the Claimant was under the influence of alcohol with a level of .14%.

The Claimant's major argument revolves around the fact that the specimen date indicated on the report from the laboratory shows April 2, 1987, and then it later indicates the date of the receipt as April 4, 1987. The date of the report is April 7, 1987. The Claimant contends that since the Carrier pulled him out of service and had the specimen taken on April 3, 1987, it is clear that the specimen that was tested, that showed positive for alcohol, was not his.

After a thorough review of the record, this Board finds that the evidence is clear that the specimen tested was, in fact, that of the Claimant. There were a number of dates that were wrong that were included on the various documents. As a matter of fact, on a form filled out by the Claimant himself, the specimen date is listed as March 2, 1987. However, that very form from the medical laboratory shows a date stamp of April 3, 1987. All of the evidence viewed as a whole makes it clear that the urine that was tested by the medical laboratory was that of the Claimant. There is really no challenge to the result that that urine was positive for alcohol. Therefore, the Claimant was clearly guilty of the Rule G violation.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find that the Carrier's action was unreasonable, arbitrary or capricious.

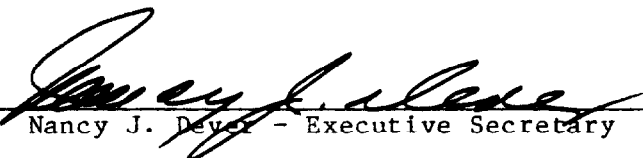
In the case at hand, the Claimant was previously dismissed for a Rule G violation in 1983. He was reinstated and was subsequently dismissed and reinstated again in 1985. Given the nature of the infraction here and the previous disciplinary history of the Claimant, this Board cannot find that the action taken by the Carrier was unreasonable, arbitrary or capricious. Therefore, the Claim shall be denied.

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 16th day of January 1991.