

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12510
Docket No. 12428
93-2-91-2-228

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of
(Transportation Communications
(International Union
(Chicago and North Western
(Transportation Company

STATEMENT OF CLAIM:

"1. Carman Marvin Johnson, Proviso, Illinois, was unjustly removed from service on August 19, 1989 for alleged medical disqualification account the Chicago & North Western Transportation Company violated Rules 26 and 32 of the controlling Agreement and failed to hold a hearing after Claimant was removed from service.

2. Accordingly, Carman Marvin Johnson be compensated for eight (8) hours per day from the day he was removed from service on August 19, 1989 until his return to service September 1, 1989."

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 employe 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.

As a participant in a substance abuse after-care program, the Claimant was required to attend after-care self-help and group meetings at "Lifeline" (Chicago Osteopathic Hospital) and he was to provide weekly urine drops.

In March of 1989, Carrier's Director of Employee Assistance wrote to the Claimant to advise him that he was not attending after-care, self-help and group meetings. He was reminded of his obligations. Again, in July 1989, the Claimant was told that he was still not making regular urine drops, and his attendance was not satisfactory. He was warned that continued failure would jeopardize his medical qualification to continue to work.

In August of 1989, the Employees Assistance Program was advised of failure to attend after-care meetings in July and only one urine drop during the month. As a result, the Claimant was determined to be not qualified to continue working effective August 19. He was restored to service on August 30, 1990, when Lifeline FAXed information regarding urine drops on August 1, 7 and 25, 1989. The Claimant seeks compensation from August 19 until September 1, 1989.

Carrier points out that the Claimant knew the conditions attached, and had received specific warnings.

The Claimant was not removed from service as a disciplinary matter, but rather, because he failed to follow an agreed upon procedure which was mandatory for continued medical qualification.

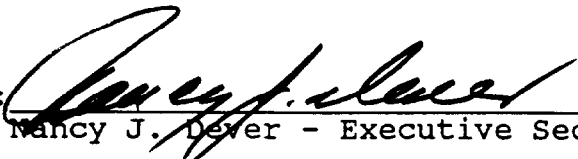
To be sure, he tested properly in August, but that was not the only condition to which he agreed. After-care meetings are significant to the therapy, and must be attended. It is unfortunate that there was a delay in the mails concerning receipt of the pertinent information. But, it was the Claimant who set the matter into motion with his failure to attend as required and he cannot now be heard to complain absent a specific showing of dilatory action by the employer.

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 10th day of February 1993.