

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12572
Docket No. 12510
93-2-92-2-27

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"DISPUTE - CLAIM OF EMPLOYEES

1. Consolidated Rail Corporation arbitrarily and capriciously suspended and subsequently dismissed Machinist P.R. Malowney from service following trial held on July 17, 1991.

RELIEF REQUESTED

1. Accordingly, Machinist P.R. Malowney should be immediately restored to service, paid for all time lost, including overtime, be credited for any and all fringe benefits that would have accrued had not the unjust dismissal occurred and have his record cleared of any reference to the charge."

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 employee 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.

The significant events leading to this claim arose on April 17, 1990, when the Claimant's urine specimen tested positive for

cannabinoids. Because of this positive test, the Carrier's Medical Director (in a letter dated April 25, 1990) informed the Claimant that he was medically disqualified from duty. He also was informed that he was required to follow explicit instructions with respect to future urine testing in order to be reinstated.

Subsequently, the Claimant's urine sample tested negative and he was authorized to return to duty by the Medical Director subject to unannounced testing for a three year period following his return to duty. The return to duty was subject to "close supervision recommended."

In a letter dated June 24, 1991, the Claimant was directed by a Carrier General Foreman to report for a laboratory examination. The "authorization for which is enclosed in the accompanying sealed, confidential envelope." The Claimant signed this letter, which also points out that failure to comply with the direction to report on June 25, 1991 for the examination could result in his dismissal from the service.

On June 27, 1991, the Claimant was directed to attend an investigation in connection with the following:

"Your failure to comply with Conrail Drug Testing Policy as you were instructed in letter dated June 13, 1990, in that you did not report to Dr. Cunningham at the Occupational & Preventive Medicine Facility in Columbus, OH for further testing as directed in letter dated June 24, 1991 from T. M. Tumbry, General Foreman, Columbus, OH."

Following the investigation, which was held on July 17, 1991, the Claimant was found guilty of the charges and he was dismissed from the service.

The Organization, in its appeal on behalf of the Claimant, contends that the Carrier breached the confidentiality of the Drug Program. However, the Board does not find evidence to support such a claim.

The evidence adduced at the hearing shows that the Claimant reported to the Doctor's office as directed on June 25, 1991. However, he failed to bring with him the Carrier's MD-61 Form that had been enclosed in the sealed confidential envelope with the letter of June 24, 1991 as noted above. The Board notes that the June 24 letter clearly stated in pertinent part that the Claimant was to report for a laboratory examination, "authorization for which is enclosed in the accompanying sealed, confidential

envelope." Given this clear direction and noting the previous correspondence to the Claimant with respect to his responsibility to remain drug-free and being subject to future testing (indeed he had been tested previously), his claim that he did not bring the MD-61 Form with him because it carried no instructions lacks credibility.

With respect to the confidentiality defense, there is nothing in the testimony developed at the hearing that would support the Claimant's contention in this respect. The nurse did call the Claimant's work site. The one Foreman with who she spoke initially testified that he did not know why the Claimant was at the Doctor's office. The other Foreman testified that he told the nurse that the Claimant was there "for a laboratory examination." This testimony was not effectively rebutted at the hearing.

Moreover, it would appear that the Claimant could have rectified any misunderstanding there may have been by returning to the Doctor's office the next day (June 26, 1991) as scheduled by the nurse. However, he failed to appear for the stated reason that the confidentiality of the Drug Program had been breached. Given his knowledge that his failure to comply with the Carrier's directive could lead to dismissal from the service, his actions were ill-advised and at his peril. Under the circumstances, the "obey and grieve later" principle was clearly applicable in this instance.

For all of the foregoing, the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 8th day of September 1993.