

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12775
Docket No. 12664
94-2-93-2-44

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Brotherhood of Firemen & Oilers
(System Council No. 6
PARTIES TO DISPUTE: (
(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

"1. That under the current and controlling agreement, Equipment Operator M. W. Dandy, SS# 413-82-8225, was unjustly dismissed from service after a formal investigation was held on September 17, 1991 and conducted by Manager T. E. Greenwood.

2. That accordingly, Firemen and Oiler, M. W. Dandy be restored to his position with the Southern Railway Company, be made whole for all lost time, with seniority rights unimpaired, vacation, health and welfare, hospital and life insurance benefits be paid effective September 24, 1991, the payment of 10% interest rate added thereto, and his personal record be expunged of any reference to this 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 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 record at bar indicates that the Claimant had excessive absences and was requested to have a medical examination to determine fitness to remain in service. On March 14, 1991, Claimant, a Machine Operator, underwent the physical exam. As a result thereof, lab analysis found that the Claimant tested positive for marijuana.

Following postponements, an Investigation was held on September 17, 1991. A review of the transcript and evidence indicates that the Claimant had previously tested positive and was notified by letter dated July 2, 1987 stating that "during the first three years...you may...be required...to report...for further testing" and would be subject to dismissal if there were continued use. By letter dated January 26, 1990, the policy was changed to extend the random testing from three years to five years. The Organization argues that such extension is not applicable to the Claimant. The Organization further argues that the medical examination to remain in service was unusual, inappropriate and selectively applied to the Claimant, who was never advised that he had a right to refuse the physical exam.

The Board has fully reviewed the record of this case and finds the following. There exists no probative evidence that in the process on the property the Claimant's rights were violated. The Board finds no justifiable reason under the instant circumstances to find fault with the Carrier's request for a medical examination to determine fitness to remain in service. The actions of the Assistant Manager in requesting the physician to have a physical examination performed due to absenteeism, while viewed by the Organization as discriminatory, was not violative of the Agreement. We find insufficient probative evidence on the property to support the Organization's charges of coercion, entrapment or discriminatory treatment, which would lead this Board to the exclusionary finding requested by the Organization. With respect to the charges, the Board finds they are sufficiently clear and well within the Carrier's rights. We have read the Carrier's formulated policy on drugs and find the alleged violation by the Claimant proven by substantial evidence. Claimant was aware of the drug free policy and does not dispute the results demonstrating a positive test.

This Board has no alternative under the existing evidence, but to deny the Claim. The facts at bar demonstrate that the Claimant had been given a prior chance to return to work following a positive drug screen and understood that he must remain drug free. Carrier's discipline upon this second occurrence cannot be found to be arbitrary, capricious or discriminatory. Based upon this full record, the Board has no basis to disturb the Carrier's determination with respect to the discipline assessed.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of November, 1994.