

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12778
Docket No. 12762
94-2-93-2-12

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
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(National Railroad Passenger Corporation
((AMTRAK)

STATEMENT OF CLAIM:

"1. The Carrier violated the provisions of the current and controlling agreement when they improperly dismissed Sheet Metal Worker James Glass on February 25, 1992 following an investigation that was held on February 18, 1992.

2. That accordingly, the Carrier be required to return Mr. Glass to service with compensation for all time lost and that he be made whole for all benefits, such as, but not limited to, vacations, Holidays, seniority, medical and dental benefits and any other fringe benefit he may have been deprived of due to his improper dismissal from service of the Carrier."

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.

On December 3, 1991, Claimant was notified of an Investigation, to be held December 6, 1991, concerning Claimant's alleged violation of Rules G and L on November 26, 1991. Following several postponements, the Investigation was held on February 18, 1992. On February 25, 1992, Claimant was advised of his dismissal.

On May 31, 1991, following a positive drug test, Claimant signed a Rule G waiver. The waiver provided that Claimant admitted his violation of Rule G and agreed to contact the Employee Assistance Program Counselor and follow the EAP Counselor's recommendations. It further provided that upon completion of the EAP program, Claimant would complete a medical examination, maintain periodic contact with the EAP Counselor for two years, adhere to any aftercare plan prescribed by the Counselor, and be subject to quarterly drug or alcohol tests for two years following his return to duty.

On November 26, 1991, Claimant provided a urine specimen for his quarterly drug screen. The specimen tested positive for cocaine. Thereafter, Claimant checked himself into a detoxification program. Upon completing detoxification, Claimant enrolled in a substance abuse halfway house. The halfway house director testified to Claimant's progress in the program and his continued sobriety.

The Organization contends that Claimant did not fully understand the Rule G waiver that he signed. The Organization further argues that Claimant should be reinstated because he voluntarily recognized his substance abuse problem and took successful steps to deal with it.

Carrier contends that Claimant signed the Rule G waiver and thereafter violated the agreement by testing positive for cocaine at his quarterly drug screen. Carrier argues that under the Rule G waiver, dismissal was self-executing upon Claimant's positive drug test. Carrier further observes that Claimant's prior record included considerable discipline including a prior termination, after which he was reinstated.

The Board reviewed the record developed on the property, including the Investigation transcript. Our review does not support the Organization's contention that Claimant did not understand the Rule G waiver that he signed.

The evidence is clear that Claimant tested positive for cocaine on November 26, 1991, in violation of one of the conditions of the Rule G waiver. Under the terms of the waiver, Claimant was subject to dismissal. Claimant's subsequent efforts to rehabilitate himself are commendable, but the Organization cites no authority supporting its position that these efforts enable this Board to upset the dismissal. Numerous Awards establish that failure to comply with Rule G waiver conditions by subsequently testing positive for drugs warrants dismissal. See, e.g., Public Law Board No. 4863, Award 17; Public Law Board No. 4568, Case 5. Generally, pleas for leniency must be addressed to the Carrier; this Board has no authority to set aside an otherwise valid dismissal based on such a plea.

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.