

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12832
Docket No. 12803
95-2-93-2-149

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

- "(1) That the Chicago and North Western Transportation Company violated the Agreement, effective December 1, 1985, in particular Rule 26, when they wrongfully dismissed Electrician Dwight Bryant, on August 4, 1992, after an investigation held July 28, 1992.
- (2) That the Chicago and North Western Transportation Company, herein after referred to as Carrier, promptly reinstate Electrician Dwight Bryant to service with all seniority rights unimpaired and make him whole for all lost wages and benefits lost, including but not limited to vacation rights, insurance, hospitalization, railroad retirement rights and all monies lost account of Carrier's most unjust action beginning April 2, 1992 and continuing until Mr. Dwight Bryant is reinstated."

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 were given due notice of hearing thereon.

Claimant was recalled from furlough and failed the return-to-work physical having tested positive for PCP, a prohibited drug.

When offered the opportunity to enter a rehab program, Claimant refused indicating he did not have a chemical dependency. After he had provided a negative sample, Claimant was allowed to return to service and did so on March 10, 1992. He did agree to certain conditions, however, namely random testing for prohibited chemicals.

On June 10, 1992, Claimant tested positive for cocaine (which test was run twice as Claimant denied taking the drug).

Claimant was suspended from service pending results of an Investigation which was held July 28, 1992.

The charge was insubordination for his failure to comply with the EAP counselors letter of March 5, 1992, wherein he was instructed to remain drug free.

Claimant's representative went all out to defend Claimant, demanding copies of various letters, a copy of the Rule "G" policy, and a copy of the test results.

Carrier responded by furnishing a copy of the Rule "G" policy, advised certain letters would be introduced at the Investigation and that Claimant had been furnished a copy of the test results.

Carrier did introduce at the Investigation the documents it said it would. The Organization protested Carriers failure to furnish the required copies in advance of the Investigation arguing it deprived them the opportunity to adequately prepare its defense.

The Organization's argument that the deprivation of requested materials prejudiced Claimants rights to a fair and impartial Investigation has to be denied. When asked at the conclusion of the Investigation if they wanted...

"...more time...for this investigation so that you can go over the documents..."

that were entered; the Organization responded:

"...the investigation... is over at this point and we will allow it to continue. I just wanted protest in the record..."

Claimant was allowed to return to service under certain, agreed to, conditions. He failed to abide with the agreement that allowed his return. The Board can find no reason to overturn or modify the discipline of dismissal imposed by the Carrier.

AWARD

Claim denied.

ORDER

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 26th day of January 1995.