

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12835
Docket No. 12828
95-2-93-2-202

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
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Appeal of discipline of dismissal from service imposed upon Lineman E. W. Shlatz on February 9, 1993, by the Consolidated Rail Corporation, Holyoke, MA."

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.

Claimant, while undergoing a return to service physical after being off furloughed for some time, tested positive for a prohibited drug.

Consistent with Carrier's established Drug Policy, Claimant was instructed to provide a negative sample either within 45 days (if it's believed the ingestion of the drug was occasional and not caused by an addiction) or 125 days if rehabilitation is required. In Claimant's case, the 125 day window was applicable and even that was extended 20 days (on the recommendation of his Counselor) to December 1, 1992.

Claimant did not comply. On February 9, 1993, following the Trial he was advised that he was dismissed from service for failing to comply with instructions of the Medical Director.

The Organization raised several procedural arguments in an effort to thwart the discipline process, but such arguments are insufficient. The notice of charges was timely and in keeping with the Rule. The lack of witnesses from the Medical Department and the Employee Counseling Service did not prejudice Claimant's right to a fair and impartial Trial (See awards 529, 371, 458 of S.B.A. No. 910, Award 5 of P.L.B. No. 4291) nor, ordinarily, can 23 years of meritorious service negate or mitigate serious charges such as being dealt with in this dispute (See awards 515 & 529 of S.B.A. No. 910, Award 114 of P.L.B. No. 3514).

Carrier's Drug Policy is laudatory and its principle has withstood many assaults in various Section Three forums since its conception. We are not herewith dealing with the rights or wrongs of a recognized and sound Policy, but the Board has some reservations as to the mechanics of its application in this case.

From the time Claimant was advised by the Medical Director of his failed reemployment physical on July 9, 1992, Claimant was assigned a Counselor who was to work with Claimant in achieving the desired goals and to keep Carrier advised of Claimant's progress. Claimant advised the Counselor that while furloughed, his medical insurance had lapsed and that he had insufficient funds to pay his own way through a rehabilitation program.

According to Claimant the Counselor was searching for a public funded program to enroll him in when his time to provide a negative sample expired. The Counselor assigned to work with Claimant wrote the Medical Director on December 7, 1992, requesting a 60 day extension as follows:

"..Mr. Shlatz did complete his intake eval. by December 1, 1992, and will begin treatment immediately."

The request was declined as follows:

"In the absence of overriding reasons to the contrary, extension requests submitted after the imposed deadline cannot be approved."

The Counselor was working directly with the Claimant. The Carrier did follow the Counselor's advise before December 1, 1992, and even though the request for an extension requested by the Counselor was six days past the deadline, from the Director's letter of denial it is evident late requests could possibly be entertained. The Counselor assigned to work with Claimant was of the belief another 60 days would have allowed Claimant sufficient time to comply with the Medical Director's instructions.

It is the Board's opinion that the Claimant is to be afforded the opportunity to provide a negative sample within 10 days of being advised by the Carrier of the testing facility. Should Claimant not comply either by failing to report or failing to furnish a negative sample, the dismissal will stand.

If, however, Claimant does provide a negative sample he is to be reinstated to service with his seniority intact and all other rights inherent therewith. Claimant will not be awarded any lost compensation and his return will be subject to three years random testing as determined by Carrier's Health Service.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 26th day of January 1995.