

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12999
Docket No. 12951
96-2-94-2-104

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Southern Pacific Transportation Company
((Western Lines)

STATEMENT OF CLAIM:

"1. That under the current Agreement, Mechanical Department Electrician C. E. Hardy, Claimant was unjustly treated when he was dismissed from the service of the Carrier for his alleged violation of S.P. Lines Rules 1005 and 1010.

2. That accordingly, Southern Pacific Lines (Western Lines) be ordered to restore Electrician E. E. Hardy to service with no conditions placed on employment status, with all rights unimpaired, including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions and the loss of wages to include interest at the rate of six percent (6%) per annum, commencing from June 13, 1993 to date of restoration to service."

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 instant record presents the following sequential facts. The testimony supports that the Claimant was missing from his assigned job. The General Foreman found him after a search lying on his back with his eyes closed. He responded only after two attempts and had no reason or explanation for his presence in the women's locker room. Testimony from two witnesses includes sufficient probative evidence of sleeping in violation of Rule 1010 and the use of drugs in violation of Rule 1005 (Rule G). The Claimant tested positive to cocaine and he admitted use thereof. Claimant was dismissed from the service of the Carrier on September 14, 1993.

The record before this Board finds that the Claimant did not show strong supporting interest in entering the Employee Assistance Program. After completing the program the Carrier permitted Claimant to return to service on a conditional basis. A central condition was to remain drug free and there is no evidence of record sufficient to prove that the Claimant failed to understand this condition. The record indicates that the Claimant took a return to work drug test which he failed. However, the evidence on property does not relate to that failure, but to the propriety of dismissing the Claimant based upon the Carrier's policy. Substantively, the central issue that the Organization brings to this Board for consideration is the dismissal of an employee with over 40 years of near discipline free service based upon his first offense of Schedule G, wherein he failed his return to work physical before 120 days had passed. The Organization argues that the penalty is excessive. The Organization presents in the record five major disputes with the Carrier's unilateral drug policy.

This Board is confronted with the classic and unfortunate situation of a long term employee dismissed by the Carrier for a Rule G violation. In this record the Carrier has met its burden of proof. The Claimant admitted use and the Carrier's policy is not properly before this Board. The Organization asks this Board to find the Carrier's dismissal unjust. This Board is not vested with leniency, nor the right to correct Carrier's actions unless it is shown that such actions violated the Agreement or such discipline is arbitrary, capricious or an abuse of discretion.

The Board has given full consideration to this instant case. There was no Agreement violation by the Carrier. The Claimant was presented with a second chance to maintain his employment in an industry where drug use and sleeping on duty have often resulted in first time dismissal. The Claimant accepted the second chance agreement and the conditions required for return to duty. The condition to take a return-to-duty physical demonstrating that he

remained drug free cannot be considered to be capricious or unreasonable. The Employee Assistance Counselor provided a favorable letter for return. The Claimant understood and agreed to the conditions, which he subsequently failed. Carrier's decision to dismiss the Claimant for continued cocaine use is a judgement of the Carrier which this Board is constrained to support. It is not the right of this Board in its appellate capacity to either substitute its judgement for that of the Carrier or to second guess from a distance what is the best action in a specific instance with a specific Claimant. It is only our right to overturn the Carrier when its actions move beyond reasonableness in the assessment of discipline necessary to maintain safety for the employees and the industry.

The Board finds that the Carrier has not violated the Agreement, nor were the conditions presented for reinstatement unreasonable. The Carrier's assessment of dismissal must stand. The Carrier's actions are consistent with the seriousness of the infraction and cannot be considered excessive or unjust. Claimant had over 40 years of service to the Carrier and worked in the railroad industry long enough to understand the implications of conditional reinstatement. The Claimant is not employed due to the Claimant's utilization of cocaine. Any modification of discipline rests solely with the Carrier. Accordingly, the claim for unjust treatment must be denied as well as that part of the claim that requests "no conditions" placed on the Claimant's employment status.

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 9th day of April 1996.