

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13026
Docket No. 12956
96-2-94-2-109

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

(Sheet Metal Workers' International
(Association
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- "1. The Carrier violated the provisions of the current and controlling agreement when they improperly dismissed Sheet Metal Worker Lawrence L. Bright on March 10, 1994 following an investigation that was held on March 1, 1994.
2. That accordingly, the Carrier be required to return Mr. Bright 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 benefits he may have been deprived of due to his improper dismissal from the 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.

Claimant was advised that the results of his return to work physical revealed that he had tested positive for a prohibitive drug. Pursuant to Carrier's policy, he was advised of certain procedures he must follow should he desire to be permitted to return to Carrier's service. One of the conditions was to produce a negative sample on or before a date specified.

This Claimant did do, and on August 27, 1992, he was advised that he was being reinstated subject to random drug screens over the next three years.

On February 14, 1994, Claimant was advised by Carrier's Medical Department that the random test sample was positive for cannabinoids, a prohibitive drug.

He was cited for an Investigation for his:

"... failure to comply with the Conrail drug testing policy ... in that you failed to refrain from the use of prohibitive drugs as evidenced by the urine sample provided on 2-7-94, testing positive."

Following the Investigation, Claimant was timely notified that he was being dismissed in all categories from Carrier's service.

The Organization has raised the defense that the various prescription and/or over-the-counter drugs Claimant was taking caused the positive test. The Carrier successfully countered that contention by stating in its letter of August 4, 1994:

"You contend that the results of the Appellant's drug screening were improper due to the possible presence of other medications. We find such arguments at best, self-serving. The results obtained from a urine drug test is a combination of an initial screen followed by a second, highly specialized, confirmatory test. The combination of an EMIT screen and a GC/MS confirmation is accepted by state and federal courts as the proper procedure for documenting the presence of drugs in urine. Urine specimens submitted for Drug Screening are tested only for the presence or non-presence of particular drugs, marijuana being one of those drugs."

Furthermore, during the trial the Carrier introduced a statement attesting to, among other things "the chain of custody, the security and sample integrity, screening procedures, confirmation procedures, the quality assurance and control and summary." Contained in that statement is the following declaration:

"The GC/MS can differentiate drugs that are almost identical in chemical structure so that the possibility of a false positive urine drug test result is virtually eliminated by the state-of-the-art analytical instrument."

The aforementioned excerpt from the certification statement was never challenged. It attests to the sophistication of the drug screening equipment and its ability to "differentiate drugs that are almost identical."

Claimant has never established how the prescription drugs he was taking would register a false reading for cannabinoids.

A review of the material and evidence produced clearly substantiates Claimant's culpability for the charges assessed. He failed to abide by the return to work conditions established in August 1992. He did not remain drug free. His dismissal will not be disturbed by this Board.

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 21st day of August 1996.