

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13153

Docket No. 13015

97-2-95-2-37

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(National Conference of Firemen & Oilers, SEIU

(System Council No. 15, AFL-CIO

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

- "1. That in violation of the current Agreement, Laborer H. Smith, Chicago, Illinois was unfairly dismissed from service of the Chicago and NorthWestern Transportation Company effective September 9, 1994.**
- 2. That accordingly, the Chicago and NorthWestern Transportation Company be ordered to make Mr. Smith whole by restoring him to service with seniority rights, vacation rights and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his record."**

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.

At the time of his dismissal, Claimant was employed as a Laborer at Carrier's M19A facility in Chicago, Illinois. In April 1994, Claimant went through a chemical dependency treatment program at Parkside Recovery Center at Bethany Hospital for cocaine abuse. Claimant was an in-patient from April 14, 1994, to April 19, 1994. He was then an out-patient until April 29, 1994. He remained on medical [illness] leave until July 5, 1994. His return to work under Carrier's EAP program was conditional upon his compliance with the Carrier's Alcohol and Drug Abuse Policy. Specifically:

- "1. You will remain abstinent from alcohol and all other prohibited drugs.

* * *

2. You will leave urine with the Employee Assistance Program or the Company physician each week for drug screens for the following six months. If a test is positive, you will be subject to dismissal for failure to comply with instructions and the Company Policy."

On July 27, 1994, the Claimant submitted a urine sample which was confirmed positive for cocaine. On August 10, 1994, Carrier directed the Claimant to appear for an Investigation concerning the positive urine sample. The Investigation was held on August 31, 1994, and by notice of September 9, 1994, Claimant was advised that he was dismissed from Carrier's service.

It is the Carrier's position that Claimant was well aware of the conditions of his reinstatement, but disregarded the terms and failed to keep his system free of prohibited substances. Thus, dismissal was appropriate. The Organization maintains that the evidence presented at the Hearing does not support the findings of the Carrier. It asserts that Claimant was aware of his obligations, had submitted clean samples and vastly improved his work performance up to the date in question, and had a reasonable explanation for the presence of cocaine in his urine sample.

Claimant testified at the Hearing that he would not have submitted a urine specimen if he had thought it was positive. He also testified that his soon-to-be-ex girlfriend had threatened to do something to make him lose his job if he broke up with

her, and he believes she may have slipped some cocaine into his soft drink while he was visiting her. Unfortunately, Claimant was unable to produce the girlfriend at the Hearing. While his testimony appears disingenuous and has some ring of credibility, there is not sufficient evidence on this record to counter the Carrier's clear evidence of the presence of cocaine in Claimant's urine. While we are mindful of Claimant's long service record with the Carrier, we also note that, because of his medical leave of absence, he was required to submit only three urine samples to Carrier before the sample which tested positive.

Claimant testified that he in addition to being tested weekly by the Company, he makes urine sample drops to his rehabilitation center, and that all of those have been negative for cocaine. However, no evidence was presented on the record to confirm his statement.

In light of the foregoing, although the Board regrets sustaining the discharge of a 16-year employee who may well have "gotten his life in order," the lack of evidence on the record before us, compels the Board to leave Carrier's discipline undisturbed.

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 8th day of September 1997.