

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13232

Docket No. 13120

98-2-96-2-18

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

(International Brotherhood of Electrical Workers
(Local Union No. 214

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (Chicago &
(North Western Railway 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 Leon G. Marr, on January 14, 1995, after an investigation held January 10, 1995.
2. That the Chicago and North Western Transportation Company, herein after referred to as Carrier, promptly reinstate Electrician Leon G. Marr 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 benefits lost, as well as 10% interest on all monies lost account of the Carrier's most capricious, arbitrary and unjust action beginning January 14, 1995 and continuing until Mr. Leon G. Marr 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 dismissed from the service of the Carrier on January 14, 1995 as a result of a formal Investigation held on January 10, 1995.

The facts as revealed in the transcript show that in December 1993 Claimant tested positive for cocaine during a return to work physical examination. As a result, Claimant was instructed to report to the Carrier's Director of Employee Assistance Program to determine the requirements for return to service.

As a result of the evaluation by the EAP the Claimant was allowed to return to work provided there was compliance with the following instructions:

- "1). 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. You are hereby instructed to do the following in order to maintain your medical qualifications to work:**
- 2). You will be required from time to time during the subsequent eighteen months following the successful completion of your six-month, weekly urine drug screens to report to the Employee Assistance Program or the Company Physician for further urine drug screens to demonstrate that you are abstinent from all prohibited drugs. If a test is positive, you will be subject to dismissal for failure to comply with instructions and Company policy."**

In late May 1994 the Director of the EAP found out that the Claimant was not giving urine samples and Claimant was ordered to comply within ten days. Beginning June 8, 1994 Claimant restarted the process of leaving samples on a weekly basis. On September 14, 1994, the Claimant's sample tested positive for cocaine.

Claimant was cited on September 24, 1994 to attend an Investigation. Due to numerous postponements the Hearing was not held until January 10, 1995, which resulted in the Claimant's dismissal.

The Organization has progressed this claim on the basis that the Carrier was arbitrary and capricious in dismissing the Claimant. It argues the Claimant was not aware of the Company policy on the use of drugs. Also, Claimant has been cooperative throughout, and that the discipline assessed was excessive.

The record shows the Claimant was given a fair and impartial Hearing. It also reveals the Claimant was given written instructions concerning what would happen if he tested positive on any of the drug screen tests.

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 30th day of March 1998.