

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13491

Docket No. 13387

00-1-98-2-75

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

(International Association of Machinists and Aerospace
Workers

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Consolidated Rail Corporation arbitrarily and capriciously dismissed Machinist T. N. Tomlin, following trial held on February 19, 1998.

Accordingly, Machinist T. N. Tomlin, should have his record cleared of any reference to the charges, as if the unjust discipline had not been imposed, be credited for any and all fringe benefits that would have accrued and be paid all time lost, including overtime, commencing from January 13, 1998.”

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.

On January 13, 1998, the Carrier advised the Claimant that a trial was being scheduled for February 5, 1998, in connection with:

“Your failure to comply with company policy in that you failed to refrain from the use of Cocaine Metabolites as evidenced by the results of the blood/alcohol test that you provided on January 8, 1998 at approximately 4:00 P.M., while employed as a Machinist at the Enola Diesel Terminal, 218 Enola Road, Enola, PA, during your tour of duty 3:00 P.M. to 11:00 P.M.

Violation of Safety Rule 4010 of the S7D, Maintenance of Equipment employees on January 8, 1998 at approximately 4:00 P.M. while employed as Machinist at the Enola Diesel Terminal, 218 Enola Road, Enola, PA. during your tour of duty 3:00 P.M. to 11:00 P.M.”

The trial was postponed to February 19, 1998. The letter of postponement was sent certified mail, return receipt, to the Claimant’s address of record.

The trial was scheduled to convene at 8:00 A.M., but was set back until 8:23 A.M. awaiting either the Claimant’s belated appearance or a call from him explaining that he either would be late or that he could not attend for some acceptable reason.

The Claimant did not show, nor did he call. The trial commenced without an objection from his representative.

The Carrier presented its evidence that the Claimant tested positive for a prohibited drug. The Carrier also presented evidence that this was the Claimant’s second failed test as he had also tested positive on August 18, 1997. At that time he was withheld from service until he provided a negative sample. He was returned to service on October 29, 1997, but he was instructed to keep his system free from such substances as cannabinoids and cocaine. He was further advised that when he was returned to service after his first positive testing, that he would be subject to random testing, and should he again test positive, he may very well suffer dismissal.

There is absolutely no hard and fast rule that an accused must be in attendance at his trial. It is an option available to him to appear, to face his accusers, to rebut any and/or all of the evidence the Carrier submits. If the charged employee opts not to attend, he does so at his own peril. See Second Division Awards 11763, 13217, 13360.

Since the Claimant opted to stay away from the trial, all the evidence presented by the Carrier stands unrefuted, and in the Board's opinion, is sufficient to establish the Claimant culpability.

It is noted in the written material following the trial and dismissal of the Claimant, the Organization accuses the Carrier of going beyond the four corners of the trial transcript, then proceeds to do the same. The Organization also challenged the Carrier's notice to the Claimant suspending him from service as being vague and not in accordance with the Rule. Such should have been addressed at the Investigation.

The Carrier has committed no procedural error that warrants overturning the discipline process, nor is there any leeway for the Board to consider any mitigation of damages. The dismissal of the Claimant was based upon substantial, un-rebutted evidence.

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 11th day of April, 2000.