

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13492

Docket No. 13402

00-2-98-2-91

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

(National Conference of Firemen & Oilers

PARTIES TO DISPUTE: (

(Soo Line Railroad Company

STATEMENT OF CLAIM:

- “1) That in violation of the current Agreement, Mr. W. Miller, Hostler Helper, Chicago, Illinois, was unfairly dismissed from service of the Soo Line Railroad Company, effective January 29, 1998.
- 2) That accordingly, the Soo Line Railroad Company be ordered to make Mr. Miller 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 Agreement 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.

On March 19, 1997, the Claimant tested positive for a prohibitive chemical ingestion. He was offered the opportunity to enter an EAP program for rehabilitation. He was informed that for a period of five years following this first positive test, he would be subject to random testing and should a future positive test be recorded, it would be a breach of his commitment which would possibly lead to disciplinary action.

On November 13, 1997, the Claimant was asked to submit to a random test. He was first given the Breathalyzer test which registered .065. A second such test was administered 15 minutes later and it registered .059. The Breathalyzer test clearly established that at 3:30 P.M., 30 minutes after his shift started, he had alcohol in his system.

His argument that he consumed Nyquil to combat a cold was the reason for the positive test. This alibi fails to sway the Board just as it failed to sway the Carrier. When the Claimant submitted to the Breathalyzer, he did not tell the tester he had consumed anything that just might raise a false positive rating.

After reviewing the transcript, it is clear to the Board that the Carrier established substantial evidence of the Claimant's culpability. The discipline will not be disturbed.

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.