

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13712

Docket No. 13573

03-2-00-2-55

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

PARTIES TO DISPUTE: (*(International Brotherhood of Electrical Workers
(Canadian Pacific Railway/Soo Line Railroad Company*

STATEMENT OF CLAIM:

- "1. That in violation of the controlling Agreement, Communications Maintainer J. K. Martinovich was unjustly dismissed from the service of the Canadian Pacific Railway (Soo Line Railroad District) following an investigation held on March 10, 1999.**
- 2. That the investigation held on March 10, 1999 was not a fair and impartial investigation under the terms required by the rules of the current Agreement.**
- 3. That accordingly, the Canadian Pacific Railway (Soo Line Railroad District) be directed to return J. K Martinovich to its service with restoration of all lost wages, rights, benefits and privileges which were adversely affected by the unjust removal from service and dismissal. In addition, that record of this matter be removed from his personal 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 April 8, 1999 the Carrier dismissed the Claimant from its service. As a result of an Investigation held on March 23, 1999 the Carrier found that the Claimant refused to take a FRA mandated drug test on March 1, 1999. Under the FRA regulations a refusal to take a drug test is treated as a positive test.

On March 1, 1999 the Company was notified that the Claimant had to take a FRA mandated drug test. The Claimant was so notified. The Carrier usually tests its employees at the Harvey, North Dakota, Yard Office, but the Claimant refused to take the test because it was an invasion of his privacy. However, the Claimant and the Road Foreman agreed to do the testing at the Central Dakota Physicians Clinic in Harvey. Upon arrival at the Clinic the Claimant said, "This is bull****. I'm not having anything to do with it." The Claimant then walked out of the clinic.

The Organization argues that the Claimant never said he refused to take the test. However, his actions speak louder than his words. It is clear that the Claimant did not want to take the test; his actions confirmed his refusal.

The Claimant has had a previous incident involving the use of drugs. The Claimant elected to take advantage of the Carrier's By-Pass Agreement rather than discipline.

The Carrier has met its burden in proving the Claimant violated its Rules pertaining to the use of drugs. There is no basis to overturn the action of the Carrier in this case.

AWARD

Claim denied.

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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 20th day of March 2003.