Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13720
Docket No. 13619
03-2-01-2-24

The Second Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division
(Transportation Communications International Union
(
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

1. The Duluth, Missabe and Iron Range Railroad Company violated the terms of our current Agreement, in particular Rule 31 of the Duluth, Missabe and Iron Range Railway Agreement, when they arbitrarily and unjustly dismissed Proctor, Minnesota Carman Peter R. Brose *without first holding an investigation.*

2. That; accordingly, the Duluth, Missabe and Iron Range Railroad Company be directed to return Carman Peter R. Brose to active service with compensation for eight (8) hours pay for each workday he was held out of service, commencing June 16, 2000 through and including March 1, 2001 which represents all time lost until his passing. We also claim the following:

    1. Made whole for all vacation rights;
    2. Made whole for all health, welfare and insurance benefits;
    3. Made whole for pension benefits including railroad retirement and unemployment insurance;
    4. Made whole for any other benefits he would have earned during the time he was out of service;
    5. Made whole for all wages, lump sum payments, general wage increases and cost-of-living adjustments, resulting from current negotiations on the National Contract;
    6. Paid for all overtime hours he was deprived of during his suspension;
    7. All correspondence and record of the dismissal, be removed from his personal record and file."

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 4, 1999, the Carrier sent the Claimant the following letter:

"This letter is to confirm our recent conversations concerning the possibility of your return to service as a Carman for the DM&IR. General Manager, Mr. John C. Pranaitis, has given his approval to schedule you into the Gateway Rehabilitation Program. This is necessary account your current status, off work since December 4, 1997 because you failed a return to work physical.

I think it is necessary to review your employment record at this time. On November 19, 1996 you were evaluated and entered a rehabilitation program with Gateway. On December 4, 1996 you finished an in patient program and the next day began the out patient program. On January 8, 1997 you were removed from service per the Director of Medical Services, instructed that you must contact Jean Abervold at Gateway immediately. In a letter dated February 13, 1997 certain conditions listed what you must do, prior to your return to service. On April 24, 1997 you again entered a program at Miller Dwan. On June 30, 1997 a letter from Gateway stated that you were OK to return to service. After a meeting with Chuck Voss, you were given a return to work physical, including a Drug and Alcohol test on July 2, 1997. You returned to service on July 9, 1997 and on August 4, 1997 you were notified by Gateway that you must be in a program for twenty-six weeks. On October 17, 1997 you were advised by myself, in a letter that we had been informed by Gateway that you were missing mandated sessions and suggested that you fully commit yourself to the program. On October 20, 1997 you left my office absenting yourself from work solely for the purpose of re-entering a EAP Program. On November 20, 1997 you were advised you were absent without permission and told to report for a return to work physical set up on December 4, 1997. Since then, you have been off duty, unfit for service.

In light of all of the above it is necessary that you now agree to a last chance contract prior to your admittance to a mandated Gateway Program. It is understood and agreed that based on your non-compliance with mandated programs, your admittance to yet another Gateway Program and subsequent reinstatement to service will be subject to the following conditions:

1. You will promptly contact Gateway Rehabilitation Center to schedule and undergo a complete evaluation and must successfully complete all treatment and counseling as recommended.

2. You will authorize Gateway and whoever else you may be referred to by Gateway, to release all records and recommendations pertaining to your treatment and prescribed program of follow-up treatment and/or counseling to Transtar's Director of Medical Services.

3. Upon notification by the Employee Assistance Program Administrator to Transtar's Director of Medical Services, that you have completed your recommended treatment program and that your condition will allow you to return to work, you will (subject to a DMIR return to work physical examination, including alcohol and drug test) be reinstated to service with seniority unimpaired, but without pay for any lost time.

4. Your employment status will be considered conditional for a three-year period from the date of such reinstatement to service. While in this conditional status you shall:

   A. Continue to follow any and all designated continuing care treatment program.

   B. Present written documentation to the Superintendent-Car Department, DMIR that you are complying with the prescribed plan of treatment by the fifteenth day of each month while actively participating in such designated program.

   C. Your continued employment is contingent not only on successful completion of treatment but

also your total compliance to our Drug and Alcohol Policy.

D. Submit to random drug and/or alcohol testing at any time, at the discretion of management.

Furthermore, it is understood and agreed that any failure by you to fulfill each and every condition set forth above will constitute a breach of this agreement which will result in your dismissal."

On January 5, 1999, the Claimant signed the Agreement noted supra. Thereafter, on June 16, 2000, the Claimant was subject to a random alcohol test the results of which were positive for alcohol. Per the conditions set forth in the Claimant's "last chance" Agreement, he was dismissed from service.

The Organization protested the Carrier's decision to dismiss the Claimant, maintaining that Rule 31(A) had been violated when the Claimant was dismissed without an Investigation. The Carrier denied the claim, advising the Organization that the Claimant had been working pursuant to the terms of the January 1999 "last chance" Agreement, and that the Claimant's positive test for alcohol on June 16, 2000 violated the specific conditions of same.

As noted above, the Claimant signed a "last chance" leniency reinstatement Agreement, which summarized his inability to refrain from abusing alcohol. The record demonstrates that the Claimant had worked very little since he entered rehabilitation in November 1996, and, after working the first few days in January, the Claimant missed the first six months of work in 1997. The record further demonstrates that the Claimant did not work a single day from October 20, 1997 until he reentered rehabilitation for the third time and signed the above quoted "last chance" Agreement dated January 4, 1999. The Carrier, clearly out of leniency rather than obligation, restored the Claimant to service on a last chance basis and agreed to pay the cost of his participation in a rehabilitation program for the third time. Unfortunately, those efforts were for nought.

The terms of the leniency reinstatement Agreement are standard. The final paragraph reads:

"Furthermore, it is understood and agreed that any failure by you to fulfill each and every condition set forth above will constitute a breach of this agreement which will result in you dismissal."

By the specific terms of the Agreement, the dismissal provision is self-enforcing. Sadly, the Claimant was unable to adhere to the provisions set forth in the January 4, 1999 Agreement that he voluntarily signed. Therefore, we do not find the Carrier's

imposition of the discipline of dismissal to be unduly harsh or otherwise inappropriate in the circumstances.

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 10th day of June 2003.