

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 13761**

**Docket No. 13616**

**03-2-01-2-20**

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

**PARTIES TO DISPUTE:** ( **(International Brotherhood of Electrical Workers**  
**(Kansas City Southern Railway**

**STATEMENT OF CLAIM:**

- “(1) That the Kansas City Southern Railway Company erred and violated the Controlling Agreement particularly, Rule 29, but not limited to, when Electrician Les Brown, Jr. was unjustly and arbitrarily dismissed from service on July 26, 2000, following an investigation held on June 13, 2000.
- (2) That accordingly, the Kansas City Southern Railway Company make whole Electrician Brown as follows:
- (A) Reinstatement him to service with seniority rights unimpaired;
  - (B) Compensate him for all wages lost at the prevailing rate of pay of electricians and all applicable overtime;
  - (C) Make him whole for all vacation rights;
  - (D) Make him whole for all health and welfare and insurance benefits;
  - (E) Make him whole for any and all other benefits including Railroad Retirement and Unemployment Insurance;
  - (F) Make him whole for any and all other benefits that he would have earned during the time withheld from service, and;

- (G) Any record of this arbitrary and unjust disciplinary action be expunged from his personnel 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.

Mr. Les Brown, Jr., (“the Claimant”), was employed as an Electrician by the Kansas City Southern Railway Company, in January 2000. On May 15, 2000, while working in the capacity of an electrician at the Shreveport Diesel Shop in Shreveport, Louisiana, the Claimant was involved in a side-swipe accident. The accident did not rise to the level of damage which triggers mandatory drug-testing under FRA Title 49, Part 40 (there was no fatality; no release of hazardous material and no impact collision). However, under established Carrier policy regarding such accidents, the Claimant was required to provide a urine sample for “non-DOT reasonable cause test.” It is not disputed that the Claimant tested positive for metabolites of marijuana, which caused the Carrier to initiate a disciplinary Investigation.

At the formal Investigation at which the Claimant and his Organization representative appeared on due notice, the Claimant admitted that he was a regular user of marijuana for “medical reasons.” When asked what medical condition he was treating with marijuana, the Claimant responded as follows:

**“Glaucoma. I try not to use marijuana at all but at times it seems like it's the only thing that works. So basically, a lot time when I use it, it would be like on the weekend when I know I don't have to work. I never use it 8 to 10 hours before I go to work. I never have since I've been here.”**

**There is no showing in the record that the Claimant was using the “medicinal marijuana” by prescription or under a physician’s instructions.**

**Following the formal Investigation on June 13, 2000, the Claimant was notified that he had been found guilty of violating Rule 1.5 of the Kansas City Southern Railway Company Mechanical Department General and Safety Rules, which reads as follows:**

**“Use or possession of drugs or alcoholic beverages while on duty or on Company property is prohibited. Employees must not have any measurable alcohol in their breath or in their bodily fluids when reporting for duty, while on duty or while on Company property. Use of intoxicants, over the counter or prescription drugs, narcotics, controlled substance or medication that may adversely affect safe performance is prohibited while on duty or while on Company property except medication that is permitted by a medical practitioner and used as prescribed. Employees must not have any prohibitive substance in their bodily fluids when reporting for duty, while on duty or while on Company property.”**

**Careful review of the record reveals no support for the Organization’s positions that the Carrier lacked reasonable cause to test the Claimant or that fatal procedural deficiencies in the Notice of Hearing violated the Claimant’s contractual due process rights. While we cannot understand why the Carrier would decline to honor the Organization’s pre-hearing request for a copy of Rule 1.5, we find therein no fatal compromise in the fairness of the Hearing, since the Rule had previously been provided to the Claimant and it was placed in the record at the outset of the Hearing.**

On the merits, there can be no room for reasonable debate that the Carrier persuasively demonstrated that the Claimant was in violation of the last sentence of Rule 1.5. At bottom line, the claim before us presents a plea for leniency by the Carrier to allow this five-month employee to avoid dismissal and enroll in an Employee Assistance Program. While such a disposition would lie within the discretion of management, a leniency reinstatement of a railroad employee indisputably guilty of violating a regulation like Rule 1.5 may not appropriately be imposed by arbitral fiat. Based on all of the foregoing, this claim must be denied.

**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 1st day of October 2003.