

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13872
Docket No. 13765
05-2-05-2-16

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(Brotherhood of Railway Carmen/ Division of TCU
PARTIES TO DISPUTE: (
(Utah Railway Company

STATEMENT OF CLAIM:

- “1. The Carrier violated Rule 32 of the Denver and Rio Grande Western Controlling Agreement effective July 31, 1980 of which the Brotherhood Railway Carmen on the Utah Railway Company covered. The Carrier did arbitrarily, unjustly and capriciously withheld Carman Donald E. Webster from service on May 24, 2004 pending investigation. He was cited for investigation on June 7, 2004 and was held on July 13, 2004.
2. The Carrier be ordered to compensate Carman Webster as follows:
 - A. Return to service with seniority rights unimpaired
 - B. Made whole for all vacation rights.
 - C. Made whole for all pension benefits, including railroad retirement and unemployment insurance.
 - D. Made whole for all health, welfare and insurance benefits.
 - E. Pay for all time lost, including time lost for holiday pay and all other compensation for all overtime pay that he would have received from until returned to service.”

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.

The Claimant, D. Webster, a Carman, was in service with the Carrier at its Provo, Utah facility. The Claimant was discharged as a result of an investigation held on July 13, 2004 for the use of illegal drugs.

The Organization argued that the Claimant is guilty of no wrongdoing. The hearing was held under Rule 32. The charges are procedurally defective as the Claimant was charged with a violation of a Union Pacific Railroad rule. It was the Carrier's position that the employees are now under the Union Pacific controlling agreement. The hearing officer admitted that the Claimant was not charged under the Union Pacific drug and alcohol policy, just a general code. The Claimant does admit that he used methamphetamines before coming to work on May 24, 2004. He has been in contact with the EAP. The Claimant provided proof of his being involved with the drug rehab program. Further, the Carrier argued that the Organization violated the time limits Rule 32 under the DRGW Agreement. DRGW no longer exists. The Organization would note that the Carrier wants to charge the Claimant under Union Pacific rules but hold the Organization to the DRGW for time limits. The Claimant just wants the opportunity to complete the EAP program and return to his position. Therefore, dismissal was totally unwarranted.

The Carrier argued that the Organization failed to appeal the claim in a timely manner, therefore, the Board has no jurisdiction in this matter. Rule 32 of the controlling agreement states that the appeal of disciplinary action must be made within ten days. The appeal was not received for 21 days following the date of advice of his dismissal. The Organization argued that the Denver and Rio Grande agreements no longer exist. Therefore, time limits were not violated. The Carrier argued that the Denver and Rio Grande agreement does exist and it is the

controlling agreement on the property. The carmen on the property are now represented by the committee that handles Union Pacific carmen. The record shows that there is no new agreement in place and, therefore, the old agreement still applies. Numerous awards state that improperly appealed claims must be dismissed.

Upon complete review of the evidence, the Board finds that, after it has reviewed the time limits arguments, there are unique circumstances in this case that lead the Board to conclude that the matter is properly before the Second Division. Therefore, the Board will proceed to the merits of this matter.

The claim is invalid on its merits. The Claimant admitted that he has used illegal drugs. The rule allows that employees can be held out of service pending investigation for serious offenses. Numerous awards uphold dismissal for use of illegal drugs even for longer service employees with better records than the Claimant. The Claimant admitted that he violated the rules.

With respect to the merits the record is very clear. The Claimant reported to work and behaved oddly. He admitted that he had taken methamphetamines prior to his reporting for work. This is a very serious violation of Carrier rules, potentially exposing not only the Claimant but his fellow employees to serious safety consequences. There was no showing that the Claimant went through the employer sponsored EAP, and under these circumstances dismissal is upheld.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 22nd day of December 2005.