

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13904
Docket No. 13785
06-2-05-2-32

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

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- “1. That the Union Pacific Railroad Company violated the Controlling Agreement, particularly Rule 37, but not limited to, when Salt Lake City, Utah Electrician Robert W. Mair was unjustly and arbitrarily suspended from service August 26, 2004 and dismissed from service on September 22, 2004, following a formal investigation held on September 9, 2004.
2. That, accordingly, the Union Pacific Railroad Company be ordered to make whole Robert W. Mair as follows:
 - a. Reinstatement him to service with seniority rights unimpaired.
 - b. Compensate him for all wages lost at the Electricians prevailing rate of pay, including applicable overtime;
 - c. Interest at the judicial rate;
 - d. Make him whole for all vacation rights unimpaired;
 - e. Make him whole for all health and welfare and insurance benefits.
 - f. Make him whole for any and all other benefits including Railroad Retirement and Unemployment Insurance;
 - g. Make him whole for any and all other benefits that he would have earned during the time withheld from service, and;

- h. Any record of this arbitrary and unjust disciplinary action be expunged 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.

The Claimant, Robert W. Mair, an electrician with 28 years of service at the Carrier's Salt Lake City, Utah Roper Diesel Shop, was dismissed from service as a result of an investigation held September 9, 2004 for failure to take a required urine drug test.

The Organization argued that the termination of the Claimant was improper and based on a biased and arbitrary investigation. The Carrier violated Rule 37 of the Agreement, and the Claimant did not violate any rules. The Organization does not condone or deny the fact that the Claimant left the property. He did so with the full authority of his supervisor. The Claimant did not receive a fair and impartial hearing, and the discipline assessed was excessive. The Hearing Officer collaborated with Carrier witnesses. He was clearly biased and prejudicial in the way that the hearing was conducted. With 28 years of service the Claimant at the very least deserves the right to begin anew. The Organization would note that the Claimant did not refuse to take the random drug test, but he simply went home. He then went back to take the followup test. Any drugs or alcohol in his system would have still been there. Under the circumstances of this case the penalty of dismissal was excessive. The Claimant is

conscientious employee who simply became ill. He in no way attempted to avoid his responsibilities under the drug testing policy

The Carrier argued that this is the second dismissal from service for this Claimant. He was dismissed previously for a finding of cocaine in his system. He availed himself of a one time return-to-service result under the Carrier's drug and alcohol policy. His return to service would be under the terms and conditions of his agreement which he has signed. The record shows that the Claimant's misconduct was proven. The record of this case shows the Claimant left the Carrier's property without the permission of his manager. He did so after being notified that he was being required to submit to a followup test. In fact the Claimant left the property after being escorted to the testing area and placed under the control of the collector. This places the Claimant in violation of numerous rules and policies and returning later does not abrogate these violations. The notice of investigation and the investigation itself were conducted in accordance with the applicable rules of the Agreement. The Claimant was afforded all procedural rights required. The seriousness of the Claimant's proven offense fully supports the discipline imposed.

Upon review of the entire record in this matter, the Board finds that the Claimant by his own voluntary actions violated numerous rules including his return-to-work agreement under the Carrier's drug and alcohol policy. The record shows that the notice of investigation and the investigation itself were held in accordance with the applicable rules. The reason that individuals who are going to be tested must be tested at that specific time is because that leaves no doubt that any chemical which might interfere with the test would not be ingested by the testee. The record shows that the Claimant clearly violated the return-to-work agreement under which the Claimant was operating at the time. Therefore, the claim shall be denied.

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 7th day of July 2006.