

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13920
Docket No. 13806
07-2-06-2-27

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Railway Carmen Division of TCU**
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

“1. That the Kansas City Southern Railroad Company violated Rule 29 of the April 1, 1980 Kansas City Southern Collective Bargaining Agreement when they arbitrarily, unjustly, and capriciously withheld Carman K. C. Pratt from service on March 21, 2005 and as a result of investigation held on June 16, 2006, subsequently terminated him permanently on June 27, 2005.

2. That the Kansas City Southern Railroad Company be ordered to compensate Carman K. C. Pratt as follows:

- a. Returned 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 April 25, 2005 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.

On March 31, 2005, Carrier notified Claimant to appear for a formal investigation on April 18, 2005. The investigation was postponed and subsequently held on June 16, 2005, to develop all the facts and determine Claimant's responsibility, if any, in connection with his alleged violation of General Responsibility Rule 1.5, as indicated by the results of his drug screen performed on March 16, 2005.

On June 27, 2005, Claimant was notified that he had been found guilty as charged and was dismissed.

The Claimant recognizes he tested positive for drugs and has admitted to using illegal drugs. The Organization argues that Claimant's problems are the result of an insidious disease. It further argues in his behalf that Claimant was honest with the Carrier about his mistakes and has successfully completed its Employee Assistance Program and was continuing to participate in other on-going rehabilitation programs. Therefore, the ultimate punishment of dismissal is arbitrary and excessive rather than being corrective and should be reduced.

The Carrier argues that Claimant is a short time employee who admitted his guilt to the charge of using illegal drugs and having those drugs in his system when he was tested. It also makes a procedural argument that the Statement of Claim presented to the Board is not the same one handled between the parties on the property. Therefore, it states the Board should either dismiss the claim for being defective or deny it on its merits.

The Board has reviewed the transcript and record of evidence and is not persuaded by the Carrier's procedural argument. The dispute will be resolved on its merits.

The facts indicate that Claimant was hired by the Carrier as a Carman Apprentice on May 3, 2004 at East St. Louis, Illinois.

On March 15, 2005 (a little over one year after being hired) Claimant was scheduled to work the daylight shift at the East St. Louis facility. About 6:30 A.M. Claimant called his Supervisor and told him he could not report for work that day. He offered no reason his absence. Approximately, 30 minutes later the Supervisor received a call from Claimant's wife asking if he had come to work that morning, at which time the Supervisor advised her that he had laid off for the day. About 11:00 A.M., the Supervisor received another call from Claimant's wife who told him that Claimant was in jail in connection with filing a false police report of a stolen car, and for suspicion of drug use. The Supervisor asked the Claimant's wife if Claimant was using illegal drugs and she said "yes".

The following morning when Claimant reported to work, he was instructed to submit to a return-to-work physical exam, which included a drug and alcohol test. The drug test indicated a positive result for cocaine and marijuana. During the course of the formal Investigation the Claimant admitted to the use of the aforementioned illegal drugs. The Board agrees with the Claimant and the parties that the Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the dismissal was appropriate. There is no Rule in the Agreement that states the Carrier is required to reinstate every employee it dismisses for a first drug offense because they join the EAP. Nor has there been any showing of disparate treatment towards Claimant in that he was dealt with more harshly than other employees who committed similar offenses in similar circumstances. The Board finds and holds that the dismissal of the Claimant, short term employee, is appropriate as it was not arbitrary, excessive or capricious. The discipline will not be set aside.

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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 6th day of August 2007.