

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13933
Docket No. 13817
NRAB-00002-070001
(07-2-1)

The Second Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

(David Conand
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Brief Description

The result of the investigation on 11-30-05 for which David Conand was assessed a level 5 permanent dismissal discipline status.

Remedy sought

Request for Reinstatement with pay for time lost."

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 December 13, 2005 the Carrier dismissed the Claimant from its service. As a result of an investigation held on November 30, 2005 the Carrier found that:

“On or about October 10, 2005, while working as a carman you were quarrelsome and insubordinate with your supervisors, failed to comply with instructions and refused to take an UPRR Reasonable Suspicion drug and alcohol test. Your actions are found to be in violation of General Code of Operating Rules 1.6 (3) Insubordinate, 1.6 (6) Quarrelsome, 1.6 SSI 10-A, 1.13 and the Union Pacific Railroad Drug and Alcohol Policy (effective January 15, 2004).”

The Investigation was originally scheduled for October 28, 2005, then rescheduled for November 11, 2005, and then November 30, 2005. Claimant did not attend the hearing. At 1:05 AM on November 30, 2005 the Claimant sent an email to the Carrier stating he would not attend the Investigation.

The facts in this case are that on October 10, 2005 Claimant was working as a carman at the Oakland Intermodal Facility. After several encounters with Carrier Officers, the determination was made that the Claimant was acting strangely. Accordingly, Claimant was asked to take a drug test under the provisions of the Carrier's Drug and Alcohol Policy. Claimant refused to take the test and accordingly removed from service.

Under the Carrier's Policy a refusal to take a test equates to a positive result.

Claimant has progressed this claim on his own. His submission mentions numerous things; run ins with Carrier officials, alleged safety violations, FRA safety rules, but at no time does the Claimant discuss the failure to take the drug test on October 10, 2005.

Claimant was given a fair and impartial hearing after two postponements, and the Carrier has met its burden of proving the Claimant violated its Rules.

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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 27th day of March 2008.