

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26701
Docket Number MW-27177

Ronald L. Miller, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Section Foreman S. A. Mazotti for alleged 'failure to properly report for duty in a fit condition on June 26, 1985' was on the basis of unproven charges, without just and sufficient cause, arbitrary, capricious and in violation of the Agreement (System File D-45-85/MW-23-85).

2. The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: This case involves a number of issues, some of which deal with the reliability of particular drug testing procedures. Nevertheless, the crux of the case concerns a much less complex matter. Did the Claimant fail to report for duty in a fit condition on June 26, 1985, as charged by the Carrier?

The record of this case indicates that the results of a first examination (taken by the Claimant on June 24, 1985) were lost, and as a consequence, the Claimant was instructed to submit to a second examination on June 27, 1985. The Carrier's decision to dismiss the Claimant was based upon the allegation that he failed to report for duty in a fit condition on June 26, 1985. There is no evidence that the Claimant reported for work, or should have reported for work, on the June 26, 1985.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

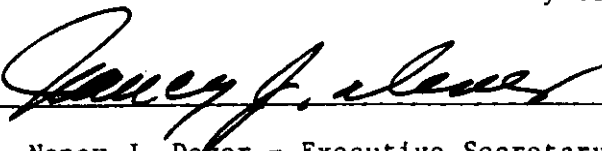
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.