

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(The Kansas City Southern Railway Company

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

(1) The dismissal of Track Laborer C. B. Wilson for alleged '... violation of Company Rule G on December 10, 1985 and January 13, 1986.' was without just and sufficient cause, arbitrary and on the basis of unproven charges (Carrier's File 013.31-341).

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

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Claimant was employed as a track laborer by the Carrier. On December 10, 1985, Claimant underwent a physical examination that included a drug screening; Claimant had been out of service because of medical problems. The results of the drug test were positive for marijuana. On January 13, 1986, Carrier administered a second drug screening to Claimant, which resulted in a second positive result for marijuana. On January 31, 1986, Claimant was notified to attend a formal investigation in connection with the charge:

"to ascertain the facts and determine your responsibility in connection with alleged violation of Company Rule G on December 10, 1985 and January 13, 1986."

The hearing took place on February 7, 1986, and, as a result, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal. The Organization contended that the Claimant had never been released to return to work and, therefore, Rule G was inapplicable.

On February 17, 1987, the Organization furnished the Carrier with a copy of a Return to Work statement from Claimant's physician dated January 27, 1987, which released Claimant to return to duty with no restrictions on January 28, 1987. The Carrier eventually agreed to return the Claimant to duty upon the successful completion of a physical examination and drug screen. All claims for time lost prior to January 28, 1987, were withdrawn, and the Claimant was returned to service on July 13, 1987.

This Board has reviewed the procedural claims raised by the Organization, and we find them to be without merit.

With respect to the substantive issue, the record reveals that the Carrier received the January 27, 1987, letter fully releasing the Claimant to return to work on February 17, 1987. Under well-settled Board precedent, the Carrier had the obligation of putting the Claimant back to work within five days of receiving such notification. Therefore, the Claimant is awarded back-pay solely for the period commencing February 23, 1987, until he was actually returned to service.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.