

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 28059  
Docket No. SG-27834  
89-3-87-3-361

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (SPTC):

On behalf of Signal Maintainer M. J. Lawson, for reimbursement of all compensation, benefits and rights lost between March 25 and July 24, 1986, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rules 73 and 59, when it suspended him without cause and failed to provide him with a fair and impartial hearing."

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 is employed as a signal maintainer. On March 25, 1986, Claimant was notified to attend a formal investigation in connection with the charge:

"to develop the facts and place responsibility, if any, in connection with your allegedly having in your system an illegal substance, marijuana, on March 13, 1986, of which the Company became aware on March 25, 1986, for which occurrence you are hereby charged with responsibility which may involve a violation of Rule G...."

The hearing took place on April 9, 1986, and Claimant was dismissed from Carrier's service. On appeal, Carrier agreed to reinstate Claimant on condition that Claimant agree to random urinalysis. On July 24, 1986, Claimant agreed to the conditional return to service. On September 17, 1986, Claimant submitted to a random urinalysis and tested positive; Carrier then returned Claimant to dismissed status. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

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

With respect to the substantive issues, this Board finds that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the offense of having an illegal substance in his system on the date in question. Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find the action taken by the Carrier to have been unreasonable, arbitrary, or capricious.

In the case at hand, the Claimant agreed to random urinalysis because of his previous background with illegal substances. The Claimant submitted to the random urinalysis, and it tested positive. The Claimant has already been given his second chance, and he has failed. Therefore, this Board cannot find that the action taken by the Carrier is unreasonable, and the claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of August 1989.