

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28404
Docket No. SG-28631
90-3-89-3-66

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Central of Georgia Railway Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company (CofGA):

On behalf of Brother M. E. Dean for reinstatement to service, with all pay and benefits restored, beginning March 7, 1988, and continuing until this dispute is settled, account of Carrier violated the current Signalmen's Agreement, as amended, particularly the Discipline Rule, when it wrongfully dismissed him from service. GC file CG-3-88. Carrier file SG-722"

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 were given due notice of hearing thereon.

As part of a physical examination, the Claimant was given a drug screen urinalysis on December 4, 1986. The test proved positive for marijuana. Under the Carrier's medical policy, the Claimant was withheld from service and was directed to provide a negative drug screen within 45 days. He was advised that failure to do so would make him subject to dismissal.

The Claimant provided a negative drug screen urinalysis in February 1987 and was returned to work. At the same time, however, he was advised as follows.

"During the first three years following your return to work, you may, from time to time, be required by me to report to a medical facility for further testing in order to demonstrate that you are no longer using marijuana or other prohibited drugs. Should a further test be positive, you will be subject to dismissal."

The Board finds this notice of great significance. Through this notice, the Claimant was advised (a) that he would be subject to further testing at the Carrier's discretion, and (b) that in the event of a positive drug test result, "you will be subject to dismissal."

These were the conditions in place approximately one year later (within the specified three-year period), when the Claimant was directed to undergo a further drug screen urinalysis on March 2, 1988. He was accompanied to the doctor's office for this purpose by a Carrier Supervisor.

The Claimant indicated his willingness to undergo the test but stated that he wished to have an independent drug test taken at the same time. The Claimant was in no way discouraged or prohibited from undergoing and submitting any additional "independent" test. Nevertheless, he refused to undergo the Carrier-directed urinalysis, despite warnings to him of the adverse consequences.

As a result, the Claimant was subject to an Investigative Hearing on the following charge:

". . . to determine your responsibility in connection with insubordination in that you failed to comply with instructions from the Carrier's Medical Director issued by your supervisor and Company Policy in that you failed to provide a drug urine specimen as instructed on March 2, 1988, for follow-up testing as outlined to you in Dr. J. P. Salb's letter to you dated February 19, 1987."

Following the Hearing, the Claimant was dismissed from service.

The Organization argues that the Carrier was "unreasonable" in failing to make arrangements for the Claimant to undergo a concurrent "independent" test. The Board does not agree. The conditions previously imposed on the Claimant included the requirement of "further testing" during a three-year period. It was made clear to the Claimant that he was free to obtain a separate test, if he so desired. There simply was no good cause shown for failure to submit to the drug screen test as directed by the Carrier.

The Organization also points out that the alleged refusal to take the test occurred after working hours, while the Claimant was on his own time. The Organization argues that the Claimant could not be found to be insubordinate at a time he was not on duty and under pay. The Board notes, however, that the Claimant was advised of the test requirement while he was on duty and that such direction was in line with advice previously given the Claimant that such testing might be scheduled.

The Organization further contends that there was no basis in the Claimant's observed behavior to assume he was under the influence of drugs. When he did take a separate drug screen test shortly after his refusal to take the Carrier test, the results were negative.

As argued by the Carrier, however, the issue is not whether the Claimant was under drug influence. The issue is the failure of the Claimant to comply with the drug testing procedure which came into effect, as far as the Claimant is concerned, based on the previous (and not here contested) positive marijuana test results.

In refusing to comply with instructions intended to determine whether he remained in a drug-free status, the Claimant put his employment status at risk. His dismissal following the Investigative Hearing was the logical consequence. In support of this is Public Law Board 4187, Award 7, in closely similar circumstances. That Award stated:

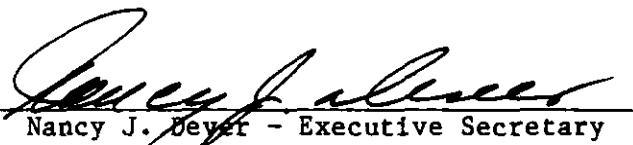
"In consideration of the record as a whole, there is no question but that Claimant acted irresponsibly and by his own actions in not taking the drug screen urinalysis at the time in question solely put himself in an adverse position subject to disciplinary action. His bare and unsubstantiated assertion that he had justifiable reason for not taking the test gave Carrier sufficient cause to hold that he was guilty, as charged, of violation of instructions to provide a drug screen urinalysis in accordance with company policy and instructions issued to him by Carrier's Medical Director. Therefore, in view of Claimant having previously tested positive for marijuana, and being afforded opportunity to reveal that his body has meantime stayed clean of any prohibited drugs, and having failed to do so, it may not be said that Carrier did not have just cause to hold that he be dismissed from all service."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1990.