

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The Carrier violated the Agreement when it improperly withheld Machine Operator M. J. Landry from service after July 5, 1988 (System File MW-88-128/472-67-A).

(2) As a consequence of the violation referred to within Part (1) hereof, the Claimant shall be reinstated to service with seniority and all other rights unimpaired and he shall be allowed all wage loss suffered beginning on July 5, 1988 and continuing until he is returned to service."

FINDINGS:

The Third 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 employees 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.

The Claimant, a machine operator, was operating a burro crane which was involved in an accident on November 12, 1987, at LaFayette, Louisiana. The Claimant was required to undergo urinalysis testing which upon return showed positive for cocaine. The Claimant waived a formal hearing scheduled for December 1, 1987, and accepted responsibility. By letter of November 30, 1987, the Claimant was advised of his dismissal for violation of Rule G. The Organization brings this Claim asserting the Carrier improperly withheld the Claimant from service after July 5, 1988. The Organization stresses the Carrier was presented with evidence of the Claimant's successful completion of a rehabilitation program in June 1988. The Organization maintains that when the Claimant waived a formal hearing, he did so on the condition that he enter and successfully complete a rehabilitation program before being reinstated to service.

The Carrier argues the record contains no evidence of any understanding or agreement which provided for the Claimant's reinstatement upon successful completion of a rehabilitation program. The Carrier further contends the completion of such a program is not a guarantee of reinstatement. Lastly, the Carrier insists the Organization's appeal does not refer to any specific Rule in support of its Claim.


It is evident the burden of proof lies with the Organization to establish the Carrier told the Claimant he would be reinstated upon completion of a rehabilitation program. The record simply does not support such a finding, and this Board, therefore, has no basis to sustain the Claim.

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 28th day of February 1991.