

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago Northwestern Transportation Company (CNWT):

Claim on behalf of J. C. Ott for reinstatement to service with all compensation and benefits restored beginning January 27, 1989, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 51." G.C. File CNW-G-AV-154., Carrier file 79-89-6. BRS File Case No. 7924-CNWT.

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.

The Claimant was notified of an investigation on a charge of:

"Your responsibility for your insubordination when you refused to submit to breath and urinalysis testing after your involvement with compromising the safety of the crossing protection at Rohlwing Road on January 27, 1989."

Subsequent to an investigation, he was dismissed from service.

The Organization has raised a procedural question dealing with the length of time involved in rendering the decision, but we do not find a contractual violation in that regard.

The Claimant and two other employees constituted a work gang on the day in question, and one of the other employees inverted a relay which caused a failure.

When the Carrier learned the cause of the failure it requested the three employees to submit to drug and alcohol tests. The other two agreed and received five day suspensions, but the Claimant refused even though he was told his refusal would be the basis of a charge of insubordination.

From the outset it should be understood that the Claimant did not demonstrate any physical manifestations to suggest use of drugs or alcohol at the time, nor does the Carrier suggest that he was under the influence of either or both. A Carrier witness stated that the only item to raise possible suspicion was that the Claimant appeared "nervous."

In its April 28, 1989 denial, Carrier concedes that the Claimant:

"... was not dismissed or removed from service because he was under the influence of drugs or alcohol as you state. The investigation was due to Mr. Ott's insubordination for refusing the test."

At the time the Claimant was requested to take the test, a co-worker, Cunningham, had already admitted to the Carrier that he had inverted the relay which caused the failure. Moreover, the Claimant was aware of that concession and under the circumstances felt there was absolutely no basis for the Carrier's request which appeared to be coupled with the understanding that there would be a five day suspension involved.

At the investigation, and in its Submission, the Carrier continues to refer to the fact that the basis for the insubordination charge stems from the failure to submit to the test since this Claimant and the other two crew members did not make the necessary tests after Cunningham's improper inversion of the relay which would have located the error. The Carrier concludes that no tests were made because, if they had been performed, the error would have been discovered.

Claimant concedes that an exhaustive test was not performed to assure that the system was fully operative, since the RYD light came back on which gave an indication of proper functioning and the crew was required to report to Euclid Avenue before the next train arrived at that point. Carrier did not rebut that assertion at the investigation.

These types of disputes are vexing indeed. Carriers do have the right, and indeed the obligation to assure a drug and alcohol free work area. At the same time, under this type of a record there must be a showing of probable cause, reasonable cause or a reasonable suspicion. There is nothing of record even remotely to suggest that the Carrier did not believe Cunningham when he conceded his error, and thus, Claimant was not suspected of being the culprit. It is certainly appropriate under the proper circumstances to require testing of the nature suggested by the Carrier. But here, the charges are rather vague, i.e., "compromising the safety of the crossing protection." There is no answer to the Claimant's assertion that there was an indication that the system worked, and that the crew was required to move to another location in a timely manner. Finally, we find nothing to suggest that the Claimant was told, or that he was reasonably aware, that the order or request was given in contemplation of an alleged failure to test as contrasted to the act of causing the failure.


This Award is limited to the facts of this record and should not be misunderstood by this employee or others to suggest that a Carrier may not validly require drug and alcohol tests in appropriate cases.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 28th day of October 1991.