

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29451  
Docket No. MS-29869  
92-3-91-3-276

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Vincent D. Crawford

PARTIES TO DISPUTE: (

(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

"(Statement) Unfair dismissal practices under the Carriers policy on drugs."

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 were given due notice of hearing thereon.

The basic facts of the instant case are not in dispute. In a letter dated February 12, 1985, Carrier notified all employees that all Company physicals would include a drug screen urinalysis and that Company policy forbade "the active employment of those who depend on or use drugs which impair sensory, mental or physical functions." By a letter dated August 1, 1985, the Company's February letter was modified to provide: 1) any employee who tests positive for a prohibited substance is required to submit a negative retest to a Carrier-designated facility within 45 days of the letter informing him of the positive test result; and 2) employees who has tested positive but then provided a negative sample, are required to undergo periodic retests for three years after their return to duty in order to monitor their compliance with Carrier Rules.

On June 22, 1987, Carrier's Medical Director advised Claimant that a drug screen performed in conjunction with his recent physical examination was positive for marijuana. He also advised Claimant that he would have 45 days to provide a negative sample, or he could avail himself of the Carrier's Drug and Rehabilitation Services Program. Claimant elected to take the latter option. Following completion of the program, Claimant provided a negative sample and Carrier's Medical Director informed him he was eligible to return to work.

In a letter dated February 7, 1989, the Carrier's Medical Director notified Claimant of his responsibilities as follows:

"My records indicate that you recently returned to service following dismissal for a drug related offense. I remind you, however, that the use of prohibited drugs is contrary to Company policy. Therefore, you are instructed to keep your system free of such substances.

During the first three years following your return to work, you may, from time to time, be required by me to demonstrate that you are not using prohibited drugs. Should you fail to comply or should a further test be positive, you will be subject to dismissal.

If you are found to have prohibited drugs in your system during the three year period following your return to service, you will not be eligible for reinstatement under the Company's Drug and Alcohol Rehabilitation Program."

On February 26, 1990, Claimant produced a urine sample for drug testing at the request of the Carrier's Medical Director. The sample was placed in a tamper evident bag and sent to the testing laboratory. On March 7, 1990, the Carrier's Medical Director's office advised the Track Supervisor that Claimant had tested positive for marijuana metabolites. The Track Supervisor cited Claimant to an investigation for failure to comply with the Company policy that he keep his system free of prohibited drugs.

A Hearing was held on March 23, 1990. Following the Hearing, Claimant was notified by letter of March 28, 1990, that he was dismissed from Carrier's service.

At the Hearing, and subsequently in his comments at the Hearing held at his request by this Board, Claimant protested his innocence and denied that he had been using any prohibited substances. He attributed the positive result of his drug test to his association with people who do take drugs. Thus, he maintained that the reason for his positive test was "secondary" exposure incurred from being in the presence of others who were smoking marijuana.

There is nothing on the record before us, however, to support Claimant's "alternative theory" of his positive test result. Accordingly, we have no basis for disturbing Carrier's assessment of discipline.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1992.