

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31147
Docket No. MW-31839
95-3-94-3-129

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

- (1) The dismissal of Class II Machine Operator W. L. Tate for alleged failure to comply with the Conrail Drug Testing Policy, as directed by letter dated December 22, 1992, in that he did not report to the Southeastern Indiana Medical Center for further testing, was arbitrary, capricious and on the basis of unproven charges (System Docket MW-3007D).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

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 employee 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 had failed a drug test in 1991. He subsequently tested negative within the time allotted in the Drug Testing Policy of the Carrier with the instructions he was to submit to random testing for a period of three years after his return to service.

Claimant was instructed to report for a random test on December 22, 1992, at 4 P.M., but he did not take the test.

Claimant was suspended from service pending the outcome of the Hearing. The first Hearing was scheduled for February 4, 1993, was rescheduled to March 4, 1993, then to April 6, 1993 and then to May 12, 1993. Each of the four was scheduled for Chicago, Illinois. On May 12, 1993, Claimant appeared at the Hearing without his representative. He desired representation, but never contacted his representative assuming that he would automatically show up to defend him.

The Carrier granted Claimant a postponement to secure representation but this time the Investigation was scheduled for June 3, 1993, at Elkhart, Indiana. Claimant was timely notified of the Hearing but arrived at the Chicago address instead of the Elkhart, Indiana, address.

Claimant was apparently living in Chicago, but his official address was at his mother's residence in Alabama. She signed for all the notices and duly notified Claimant, but Claimant says; they did not discuss the location, just assuming it was at Chicago, like the other four had been scheduled.

Claimant has a very definite communication problem. His mother had the notice. His Representative had the notice. Surely some conversation between the two and Claimant would have revealed the location of the June 3, 1993, Hearing.

The Carrier refused to postpone the Investigation the fifth time and proceeded over the objections of Claimant's representative who declined to participate when he discovered Claimant was not present and the Carrier intended to proceed in his absence.

Under the circumstances Carrier was within its rights to proceed. As stated earlier Claimant has a reluctance to communicate with either his representative or his mother or with his Supervisor to determine the when and the where of the Hearing.

There is no doubt Claimant did not report for random test as he was instructed. Under the circumstances, Carrier's decision to dismiss will not be disturbed. Any and all arguments raised subsequent to the Hearing should have been raised during the Hearing.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.