

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31199
Docket No. SG-31712
95-3-93-3-697

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

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

STATEMENT OF CLAIM:

"Claim on behalf of W. Jones Jr. for reinstatement to service with compensation for all time and benefits lost as a result of his dismissal from service, account Carrier violated the current Signalmen's Agreement, particularly Rule 51, when it failed to provide the Claimant with a fair and impartial investigation and imposed harsh and excessive discipline against the Claimant." Carrier's File No. 79-93-5. General Chairman's File No. S-AV-124. BRS File Case No. 9151-CNW.

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 were given due notice of hearing thereon.

Claimant, recognizing he had a substance abuse problem, requested and was granted a medical leave (without, apparently, having to explain his reason therefore) and voluntarily commenced a rehab program at an out of state location. The program was successfully completed. When Claimant returned to service, the Medical Department discovered he had just completed a drug rehab program and set conditions for his return to service - such as random drug tests. Also included were instructions to remain drug free.

Claimant failed a random test, was timely charged and following the Investigation was dismissed from service.

There exists no protest of or objections to the Investigation. Claimant freely admitted his problem contending it was a relapse.

The cornerstone of the Employees defense is that the Drug Rehab Program in affect on the Carrier allows two chances for someone caught dirty. That an individual, after being caught, is then allowed to enter the program and if the program is successfully completed, the individual is allowed to return to service on a leniency basis. On the other hand, if an Employee voluntarily enters the program, never having been caught dirty, he is allowed only one chance upon completion of the program.

That is not sound reasoning. Pursuant to the policy, if someone is caught violating Rule G, he will be dismissed. Then, if rehabilitation is sought, he must work successfully with the EAP counselor and after being out of service one year will be allowed to return on a leniency basis.

Volunteers to the program are not subject to dismissal, are not held out of service for a minimum of a year, and nothing appears on their work record unless they fail to abide by the terms of their conditional return to service and then only if the discipline is upheld.

Claimant lost only 60 or so days service while in the program. Had he fully complied with the conditions of his return, nothing would have been entered in his work record relative to the rehab.

Carrier's treatment of Claimant is consistent with the manner it has followed and been upheld by various Arbitration decisions.

Claimant's appearance before the Board was illuminating. He apparently has been rehabilitated, following the one relapse and is seeking to resume his career as a Signalman. The Organization has urgently sought his return. A successful rehabilitation, following a violation of the conditional reemployment can only serve to mitigate against the discipline, if the Carrier so decides but they must make that decision.

AWARD

Claim denied.

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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 1st day of November 1995.