

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31937
Docket No. MS-32239
97-3-94-3-145**

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

(Mr. S. D. Land

PARTIES TO DISPUTE:(

(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"Claim of Mr. S. D. Land that:

- 1) He was unjustly dismissed from service on March 18, 1993 by Supervisor R. W. Carter for failure to comply with Rule G (System File B-2163-2/MWC 93-05-18A).
- 2) As a consequence Mr. Land suffered time lost and loss of pay for dismissal from service and charges were placed on his service record showing violation of Rule G."

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.

On March 1, 1993, Claimant reported for work as a Truck Driver for the terminal B&B gang at Springfield, Missouri. At that time, under a federally mandated

random testing program, Claimant was required to undergo urinalysis for drugs. Analysis of the specimen showed Claimant positive for amphetamines and methamphetamines. Carrier subsequently notified Claimant of his discharge from service. The Organization requested a Hearing, which was held on April 5, 1993. Following the Hearing, Carrier reaffirmed its termination of Claimant. The Organization appealed the Carrier's decision on May 10, 1993. In its response to the Organization on May 17, 1993, the Carrier noted that this was Claimant's second such violation. On May 18, 1993, the Organization further appealed the Carrier's decision and that appeal was also denied. No further appeal was made by the Organization. Instead, Claimant chose to pursue his claim, *pro se*, before this Board. Thus, the claim is properly before this Board for adjudication.

The Board reviewed the entire record in this case. Claimant received a fair Hearing. The chain of custody of his submitted sample is undisputedly intact. Moreover, this is Claimant's second drug offense in less than two years. Claimant's Submission includes statements that he voluntarily entered into and completed a drug and alcohol program, that he remains free of illicit substances, and that he feels he could now be a good employee. In effect, Claimant requests a leniency reinstatement. While the Board commends Claimant on his resolve and his apparent refocusing of his priorities, it is not within our prerogative to substitute our judgment for that of Carrier when, as here, its discipline was not arbitrary, capricious or excessive.

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 4th day of March 1997.