

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 31954  
Docket No. MW-32370  
97-3-95-3-217

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

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

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The dismissal of Assistant Foreman D. L. McCormick in connection with the charges of 'INSUBORDINATION IN THAT YOU FAILED TO FOLLOW THE INSTRUCTIONS GIVEN YOU....' and 'YOUR FAILURE TO COMPLY WITH CONRAIL DRUG TESTING POLICY AS YOU WERE INSTRUCTED IN LETTER DATED MARCH 29, 1994....' was arbitrary, capricious, unreasonable and excessive (System Docket MW-3342D).
- (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 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 were given due notice of hearing thereon.**

**On February 2, 1994, Claimant sustained an on duty injury. He was off work due to this injury when, on March 29, 1994, Carrier notified Claimant that he had been qualified to return to service and instructed him to report for a drug screen within two weeks of his receipt of the notice. Claimant did not report for such a drug screen. Consequently, on April 22, 1994, Carrier notified Claimant to report for an investigation on April 27, 1994, concerning his alleged insubordination and failure to comply with Carrier's drug testing policy. The Hearing was postponed to and held on May 26, 1994. On May 31, 1994, Carrier notified Claimant that he had been found guilty of the charges and that he was dismissed from service.**

**The Organization contends that Claimant's dismissal was arbitrary and unreasonable. The Organization maintains that, at the time he was ordered to report for the drug screen, Claimant had not been released by his personal physician. The Organization maintains that Carrier violated its own policies which required release by the employee's personal doctor to qualify to employee to return to service. Consequently, in the Organization's view, the directive that Claimant report for a drug screen was improper and cannot serve as the basis for his dismissal.**

**Carrier contends that Claimant admitted that he received the directive to report for a drug screen and that he failed to do so. In Carrier's view, Claimant clearly was insubordinate and dismissal was justified.**

**The Board has reviewed the record carefully. Carrier directed Claimant to report for a drug screen as part of a return to duty physical. Carrier's own policy for returning an employee to duty following an occupational disability of 15 days or more required a written release from the attending physician and examination by Carrier's doctor. The record is clear that, at the time Carrier directed Claimant to report for a drug screen, his attending physician had not released him to return to duty. On the contrary, Claimant's attending physician wrote Carrier advising that Claimant had yet to complete his rehabilitation program and was not ready to resume his duties.**

The issue in this case is identical to Third Division Award 31534. In that Award we sustained the claim of an employee who had refused to take a drug screen where he had been directed to do so allegedly as part of a return to duty physical, even though his attending physician had not released him. Because we find Third Division Award 31534 controlling, the claim will be sustained.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 19th day of March 1997.**