

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32570
Docket No. SG-33541
98-3-96-3-1113

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (former Seaboard Coast Line):

Claim on behalf of W. W. Jones for reinstatement to service with compensation for all time and benefits lost as a result of his dismissal from service and for his record be cleared of all charges in connection with this discipline, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, when it did not provide the Claimant with a fair and impartial investigation and assessed harsh and excessive discipline against him in connection with an investigation conducted on January 15, 1996. Carrier’s File No. 15(96-72). BRS File Case No. 10160-SCL.”

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.

The Claimant was advised to attend an Investigation by the General Manager of Signal Maintenance to determine facts and place responsibility, if any, in connection with his alleged insubordination and with leaving his assignment without proper authority when he failed to provide the Carrier a sample for a urine drug screen, and a sample for a breath alcohol test in accordance with FRA regulations. This happened at approximately 7:30 A.M. on the morning of December 11, 1995. In accordance with Federal Regulations the Claimant was removed from service for nine months.

After an Investigation into these matters was held on January 15, 1996 the Claimant was advised on January 30, 1996 by the Carrier that he had been found guilty as charged and he was discharged from service. The discipline was appealed by the Organization in the proper manner under Section 3 of the Railway Labor Act and the operant Agreement up to and including the highest Carrier Officer designated to hear such. Absent settlement of the claim on the property it was docketed before the Third Division for final adjudication.

The Board reviewed the record in this case and can but reasonably conclude that the Claimant's testimony about having to leave the property, when he did, without taking the drug test(s) both lacks credibility and is contradictory. Obviously the only conclusion which the Board can arrive at in this case is that the Claimant left the property when he did, not in response to any family medical emergency, as he contended, but in order to avoid taking the drug test(s).

The Board, as well as Public Law Boards, have established firm precedent that a Carrier has the right to discharge an employee for refusing to submit to a drug and alcohol test (Third Division Award 26332; Public Law Board No. 4236, Award 27; Public Law Board No. 2750, Award 48). The Board has no evidence before it to warrant conclusion that it should diverge from such precedent in the instant case and it will decline, therefore, from doing so.

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 29th day of April 1998.