

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35036
Docket No. SG-35355
00-3-99-3-247**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and Ohio
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of A.D. Wimley for reinstatement to service with his record cleared and with compensation for all time and benefits lost as a result of his dismissal following an investigation held on May 12, 1998, account Carrier violated the current Signalmen’s Agreement, particularly Rules 50 and 52, when it did not provide the Claimant with a fair and impartial investigation and assessed harsh and excessive discipline against him without meeting the burden of proving the charges. Carrier’s File No. 15(98-235). BRS File Case No. 10877-B&O.”

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 dismissed on June 9, 1998 as a result of an Investigation held on May 12, 1998. The Carrier found that the Claimant had violated Rule G.

The Organization argues that the Carrier violated Rule 50(b) when it allegedly failed to render a written decision within 30 days of the Hearing. The Rule reads as follows:

“(b) The hearing will be held within ten (10) days of the date when charged with the offense. A written decision will be rendered within thirty (30) days after completion of the hearing. If discipline is assessed, the decision will state the reason therefor.”

The Organization admits the 30-day period ended on June 11, 1998. The letter was written on June 9 and mailed on June 11, 1998. The Claimant did not receive the letter until June 18, 1998.

The Rule requires that the decision be rendered within 30 days after the conclusion of the Hearing. This was done and mailed within the specified time period. The Rule does not require the Claimant to receive the notice within the 30-day period. If the Organization was to prevail, it would lessen the time for the decision to be rendered to less than 30 days, in this case 23 days.

If the Board were to agree with the Organization, it would be amending Rule 50(b). The Board has no authority to amend the parties' Agreement.

There is no dispute as to the facts in this case. The record reveals that the Claimant tested positive for the use of cocaine in November 1996. The Claimant opted to participate in the Employee Assistance Program in lieu of undergoing investigation for violation of Rule G. The program subjected the Claimant to short-notice toxological testing for a period of five years. The Claimant was required to undergo such a test on April 23, 1998. Again, the test was positive for cocaine. As a result the Investigation was held and the Claimant was dismissed.

Nothing in the record shows the Carrier was arbitrary or unduly harsh in this case. The Claimant's guilt was established and the Agreement was not violated.

Form 1
Page 3

Award No. 35036
Docket No. SG-35355
00-3-99-3-247

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 25th day of October, 2000.