

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35507
Docket No. TD-35181
01-3-99-3-29**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

**(American Train Dispatchers Department/
Brotherhood of Locomotive Engineers**

PARTIES TO DISPUTE: (

(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"This will serve as an appeal to CSX Transportation ('Carrier or CSXT') decision and discipline assessed Train Dispatcher R. L. Cochran, ID 606733, as the results of formal investigations conducted on February 26, 1998, concerning notice of charges dated December 4, 1997.

I humbly submit this request, that Mr. Cochran be reinstated with full rights, and compensated for all time lost."

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.

At all times relative to this dispute the Claimant worked as a Train Dispatcher at the Carrier's Operations Center in Jacksonville, Florida. He had been a Train Dispatcher for CSX Transportation, Inc. or its predecessors since 1980.

On July 1, 1996, the Claimant tested positive for alcohol during a random Federal Railroad Administration (FRA) drug and alcohol test and was relieved from duty. On July 16, 1996, the Claimant was charged with an alleged violation of Rule G of the Carrier's Operating Rules which prohibits the illegal use and/or possession of a drug, narcotic or other substance that affects alertness, coordination, reaction, response or safety.

The Claimant was given the option of attending a Hearing on the Rule G charge or contacting one of the Carrier's Employee Assistance Program (EAP) counselors within live days and to immediately enroll and participate in an approved rehabilitation program. On July 16, 1996, the Claimant elected the latter Rule G bypass option. The Hearing on the Rule G violation was therefore held in abeyance. The Claimant agreed that any reported noncompliance with his aftercare plan within five years of his return to service would result in a Hearing on this Rule G charge. About three weeks later the Claimant was returned to service.

On December 3, 1997, the Claimant was scheduled to work an assignment from 3:00 to 11:00 P.M. When he reported for this assignment, he was subjected to a random FRA drug and alcohol test. The Claimant tested positive for alcohol in a screening breath alcohol test and at a confirmation breath alcohol test.

On December 4, 1997, the Claimant was directed to attend a formal Investigation on December 12, 1997, in connection with his possible violation of Rule G on December 3, 1997. He was further advised that the July 16, 1996 charge of violating Rule G that had been held in abeyance was reinstated and that an Investigation regarding this charge would also be held on December 12, 1997.

The Hearings scheduled for December 12, 1997, were postponed at the Claimant's request. Two hearings were held on February 26, 1998. On March 9, 1998, the Carrier advised the Claimant that he was being dismissed from service effective immediately for his putative violation of Rule G on July 1, 1996 and on December 3, 1997.

The Organization requested that the Ms. Gail Cassel, R.N., Director-Employee Health Services and Ms. Nia Rose, Manager of Employee Assistance attend the Claimant's Investigations scheduled for February 26, 1998. The Director-Employee Health Services administered the Claimant's two breath alcohol tests that were positive. The Manager of Employee Assistance was the Claimant's EAP Counselor in 1996.

The Carrier responded that the Manager of Employee Assistance would not attend the Investigations because she did not have any information pertinent to the Investigations. The Carrier also advised the Organization that the Director-Employee Health Services could not attend the Investigation scheduled for February 26, 1998, because she was out of town that day. And in any event, she merely administered the Claimant's breath alcohol tests and had no other pertinent information to provide, according to the Carrier. Neither individual attended the February 26, 1998, Investigation.

The Organization contends that the absence of the Director - Employee Health Services who administered the Claimant's two breath alcohol tests and the absence of his EAP counselor in 1996 deprived him of a fair and impartial Investigation, but the Board respectfully disagrees.

By electing the Rule G bypass option on July 16, 1996, the Claimant waived his right to challenge his July 1, 1996 random drug and alcohol test. Additionally, he admitted that there was nothing unusual about his December 3, 1997 breath alcohol test. He did not take any exception to the results of that test. Indeed, he admitted consuming alcohol late in the evening on December 2 into early morning on December 3, 1997. Therefore, we fail to see what relevant evidence the Director-Employee Health Services could have provided that would change the result.

The Organization never explained why it wanted the EAP Counselor to attend the Claimant's Investigations on February 26, 1998. It therefore failed to demonstrate that the EAP Counselor had any relevant information to add to the Investigation.

On two occasions in a span of 18 months the Claimant violated Rule G of the CSX Operating Rules. Moreover, he admitted that he did not attend any Alcoholics Anonymous meetings, as he was required to do following his first Rule G violation. Under these circumstances, the Carrier had the right to terminate the Claimant's employment on March 9, 1998, notwithstanding his extensive service with CSX and its predecessors. The claim is denied as a result.

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 21st day of June, 2001.