

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36181
Docket No. SG-36142
02-3-00-3-327

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (former Missouri Pacific):

Claim on behalf of F. D. Hollingshed for reinstatement to service in connection with his dismissal on April 14, 1999, account Carrier violated the current Signalmen’s Agreement, particularly Rule 28, when it dismissed the Claimant without a fair and impartial investigation, and imposed harsh and excessive discipline against him without meeting the burden of proving the charges against him. Carrier’s File No. 1186389. General Chairman’s File No. 99-27-T-D. BRS File Case No. 11294-MP.”

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.

This is a discipline dispute which follows the Carrier’s dismissal of the Claimant for alleged violation of Rule 1.5 (Drugs and Alcohol) and the Carrier’s Drug and Alcohol Policy. It is the Organization’s position that the Carrier failed to prove a violation of either the Rule or Policy. Further, the Organization argues that the Claimant requested treatment prior to

the April 6, 1999 Investigation. Therefore, in the whole of this case, the Claimant should not have been dismissed. The Claimant had made a request to Management for assistance, and he should have been permitted the usual employee assistance.

Our review of the short transcript and record on the property supports the Carrier's actions in this instant case. As noted on the property, there is no procedural objections to either the Investigation or the factual base of drug use. The Carrier introduced evidence that a reasonable and suspicious cause drug test was administered on March 2, 1999 and the result was positive for methamphetamine. Both Rule 1.5 and the Carrier's Drug and Alcohol Policy were violated. The Claimant's guilt was proven.

The Board carefully reviewed the issue of the alleged requested treatment prior to the Investigation. There is no basis in this record for a finding that such a request was ever made. When challenged by the Carrier, the Organization was unable to provide the date, location or the name of the Manager to whom the request for assistance was made. The evidence of record fails to demonstrate that any request for assistance was ever made.

On the whole of this record, the Carrier must prevail. There is substantial proof of drug use and no evidence of any type that would suggest the Carrier's failure to provide the Claimant his rights, or to properly attend to any request for Employee Assistance. The claim must be denied.

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 20th day of August 2002.