

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36953
Docket No. SG-36940
04-3-01-3-482**

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

PARTIES TO DISPUTE: (**Brotherhood of Railroad Signalmen
(Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KCS):

Claim on behalf of G. L. Harlon for reinstatement to service with compensation for all lost time, including overtime, and benefits and to have his personal record cleared of any reference to this matter. Account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, when Carrier dismissed the Claimant from service in connection with an investigation held on July 7, 2000. Carrier failed to meet its burden of proving the charges against the Claimant and issued harsh and excessive discipline against him. Carrier’s File No. K0600-5423. General Chairman’s File No. 001747. BRS File Case No. 11726-KCS.”

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 required to submit to drug and alcohol testing. When he did so, the sample he provided measured at less than 90 degrees. As such, the sample was presumed to be altered or substituted. The Claimant was then given and declined the opportunity to rebut that presumption by having his body temperature measured orally. The Claimant submitted a second sample, under observation. The second sample was at a temperature in excess of 90 degrees. The second sample was submitted for laboratory testing. It was determined to be positive for amphetamines far in excess of the level required for a negative reading. Confirmatory testing indicated that the concentration was 97% for D-amphetamines, a drug of either pharmaceutical or illicit amphetamine. Upon discussion with the Carrier's Medical Review Officer, the Claimant alleged that he was taking Allegra-D. However, the record reflects that Allegra-D is a source of L-amphetamine, not D-amphetamine. Moreover, although D-amphetamines are present in pharmaceuticals, any such pharmaceutical is used to treat obesity, attention deficit disorder, and narcolepsy. The Claimant did not allege any such condition or treatment.

All testing and chain of custody protocols were followed at the collection site and during the testing of the sample. Substantial details regarding the laboratory's qualifications and testing protocols were submitted to the Claimant as requested. Finally, although it is true that some prescription drugs like Allegra-D can yield positive results for amphetamines, neither Allegra-D nor any other legitimate drug that the Claimant claimed to be taking can yield a positive result for D-amphetamine.

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 22nd day of March 2004.