

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37683
Docket No. CL-38328
06-3-04-3-249**

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

(Transportation Communications International Union

PARTIES TO DISPUTE:

(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

“Claim on behalf of the System Committee of the Organization that:

The Carrier violated Rule 24, among others, of the TCU/TRRA Agreement when it dismissed Ms. R. Litsey, Extra Board Clerk, Madison, IL, as a result of Hearing held on August 8, 2002. Such discipline being excessive, harsh, unwarranted, bordering on an abuse of discretion due to the facts brought forth throughout the course of the investigation.

The Carrier shall now be required to compensate Ms. Litsey for lost time from July 30, 2002, until claim is settled. She is to be made whole for any holiday work opportunities and lost overtime. The Carrier shall recompense any expenses occasioned by the dismissal including, but not limited to, medical expenses. In short, Ms. Litsey shall be made whole as though she had not been dismissed. The Carrier shall remove all record of investigation held August 8, 2002, and all reference thereto from her personal record.”

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 Organization in this claim takes exception to the Carrier's dismissal of the Claimant on August 12, 2002, following an Investigation held on August 8, 2002, for an alleged violation of Rule G.

The record reflects that the Claimant was working as an Extra Board Industry Clerk at Madison, Illinois, at the time of the incidents leading to her termination and had been in the Carrier's employ for 27 years. At approximately 2:00 A.M. on July 30, 2002 she was subjected to random testing for use of prohibited substances. The breathalyzer test administered showed .021 for alcohol on the first sampling and .015 for alcohol on the second sampling.

The Organization contends that the Carrier failed to take into consideration a number of factors suggesting its action was unwarranted. First, it points to the Claimant's long years of service. Second, it emphasizes that Trainmaster Davis testified at her Investigation that he had detected no odor of alcohol on the Claimant or observed any unusual behavior on the date she was tested. Third, it asserts that because the Claimant's second test results registered below 0.02, pursuant to FRA regulations it should have been considered a "negative test." Fourth, it argues that the Claimant is a small person; that she had used mouthwash immediately prior to reporting for work; that the mouthwash she used contained alcohol; and that it was very likely the residual effects of both it and the sugar alcohol from her Orbit gum had triggered the test results at issue.

Based upon our review of the record before us, for the reasons that follow the Board will deny the claim.

The Claimant's Investigation transcript discloses that this was her second Rule G offense. It is also apparent from that record that she was tested not pursuant to FRA testing, but under the Carrier's longstanding and very firm policy regarding the use of prohibited drugs and alcohol. In that connection, according to her representative, the Claimant "... knew the Terminal Railroad's policy of zero tolerance." With respect to the mouthwash and gum factors, the Board is compelled simply to say that it finds that defense unpersuasive.

It is, of course, never a happy occasion when a veteran industry employee loses his or her employment. Here, however, the Claimant was on notice from her earlier violation of Rule G; she had received a second opportunity to bring her actions into conformity with a very basic and essential Carrier Rule, but apparently did not profit from that experience. Regretfully, the Board sees no basis for disrupting the Carrier's decision.

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 30th day of January 2006.