

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37731
Docket No. CL-38609
06-3-04-3-627

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(Indiana Harbor Belt Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-13074)
that:

- (a) The Carrier violated the rules of the Agreement made effective December 1, 1949, particularly Rules 36, 37 and 38 and amendments thereto, when on Friday, December 6, 2002 it conducted an unfair and impartial hearing based on preconceived judgment of the hearing officer, who at times participated at the hearing in the role of a Carrier witness, and that statements made by the sole Carrier witness protested by representatives of the Organization were only noted for the record and not considered.
- (b) The Carrier further violated the Agreement during the proceedings of said hearing when the Organization representatives and Claimant M. R. Breski were denied the opportunity to cross-examine other Carrier officers who had direct participation in the examination and determination of Claimant's condition and ensuing decisions, thus Carrier unduly restricted Claimant's presentation of evidence.
- (c) Account of the numerous defects apparent in the hearing, it must be determined that the hearing was held in an unfair and partial manner and thus accordingly, Claimant Breski be

immediately returned to active service with all rights and benefits restored, and payment of a day's wage at the rate of the Clerk position he held on October 28, 2002 for each day he was improperly held out of service, commencing on October 29, 2002 and continuing thereafter until such time Claimant is restored to active service."

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.

Despite the wording of the Statement of Claim, the operative facts that led to the Claimant's dismissal are not in dispute. A drug test in connection with a fitness for duty physical in August 2002 returned positive for cocaine usage. He entered EAP counseling and treatment shortly thereafter. He and his Counselor completed a back-to-work rehabilitation plan by the end of September. On September 30, 2002, the Counselor wrote a letter to the Carrier with certain provisions. It notified the Carrier that an acceptable return-to-work Agreement had been developed. The Claimant agreed to maintain abstinence from all psychoactive substances not prescribed by a physician. The Claimant agreed to comply with follow-up drug testing in accordance with the Carrier's policy. The Claimant also consented to permitting the treatment program to communicate with the Carrier regarding his compliance/non-compliance. The Claimant also signed the letter to acknowledge his understanding of and concurrence with the Agreement.

After a sample tested negative, the Claimant was released to return to work on October 7, 2002. However, he was subjected to follow-up testing 16 days later on October 23, 2002. The Carrier's drug policy subjects employees to dismissal for a second positive drug test within five years. The Claimant's urine sample submitted that day tested positive for metabolites of cocaine. The Claimant was dismissed following an Investigation that produced the foregoing facts. At the time of his dismissal, the Claimant had some 27 years of service with the Carrier.

As suggested by the Statement of Claim, the Organization and the Claimant advanced a number of procedural objections to challenge the discipline. Our review of the record does not reveal any proper basis to support any of them. For example, the record does not show any shortcomings in the collection, handling, or testing of the Claimant's urine sample; it does not contain any proper challenges to the validity of the test results for either of the two positive tests discussed during the Investigation. Nor does the record establish any improper conduct on the part of the Hearing Officer in conducting the Investigation.

Given the foregoing discussion, we find the Carrier's decision to dismiss the Claimant from service was supported by substantial evidence in the record and conformed to its Drug and Alcohol Policy. The claim, therefore, 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 23rd day of February 2006.