

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40683
Docket No. SG-40583
10-3-NRAB-00003-080482**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

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

STATEMENT OF CLAIM:

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

Claim on behalf of G. D. Taylor, for reinstatement to his former position with compensation for all time lost, including skill pay, with all rights and benefits unimpaired and his personal record cleared of any reference to this matter, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, when it issued the harsh and excessive discipline of dismissal against the Claimant without providing a fair and impartial investigation in connection with an investigation held on April 4, 2007. Carrier’s File No. K06076162. General Chairman’s File No. 07-013-KCS-185. BRS File Case No. 13933-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.

At the time of the incident leading to his discharge, Claimant G. D. Taylor had been employed for approximately 25 years. According to the Carrier, on March 18, 2007, the Claimant was ordered to undergo a Kansas City Southern Railroad (KCS) reasonable cause drug screen. It is uncontested that he refused to submit to that test.

By letter dated March 20, 2007, the Carrier directed the Claimant to report for a formal Investigation on April 6, 2007, to ascertain the facts and determine his responsibility, if any, in connection with his alleged refusal to submit to a KCS reasonable cause drug screen on March 18, 2007.

The Hearing was rescheduled and took place on April 4, 2007, pursuant to which, in a letter dated April 9, 2007, the Claimant was notified that he was terminated effective immediately.

By letter dated April 26, 2007, the Organization appealed the decision on the basis the Carrier did not meet its burden of proof and the discipline assessed was unwarranted and excessive. On June 4, 2007, Signal Engineer V. A. Jones denied the appeal. On June 26, 2007, the matter was appealed to Director of Labor Relations J. Albano. On August 27, 2007, the appeal was denied. On September 27, 2007, a conference was held and the parties were unable to resolve the matter.

According to the Organization, the discipline imposed upon the Claimant was unwarranted, harsh, and excessive. The Organization asserted that the Carrier not only failed to meet its burden of proof, but also was arbitrary and capricious in its treatment of the Claimant. In addition, the Carrier abused its discretion in its determination to discipline the Claimant based on inconclusive evidence, thus rendering the discipline harsh and excessive. While the Organization does not contest the Claimant's refusal to undergo the drug test, based on his extensive tenure with the Carrier, the Organization asserts that the Carrier should now be required to overturn the dismissal and make the Claimant whole for all losses.

Conversely, the Carrier takes the position that it met its burden of proof. According to the Carrier, a review of the transcript developed during the Hearing made it clear that the Claimant was guilty as charged. The Claimant was instructed to undergo a reasonable cause drug screen, but he refused. The Claimant admitted that he had engaged in the improper behavior that prompted the instruction to submit to the drug test, and he admitted to his refusal to submit to the test. Based on the instant offense, dismissal is the appropriate penalty.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for that of the Carrier, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325 and Third Division Award 16166.)

The Board has found substantial evidence in the record to uphold the Carrier's position with regard to the incidents of March 18, 2007. We note that the Carrier proved that the Claimant refused to submit to the reasonable cause drug screen. In addition, a review of the Investigation transcript reveals that the Carrier Officer indicated that refusal to take the test could potentially result in consequences more serious than taking and failing the test. While we agree that the Claimant was a long-tenured employee, we nonetheless find that he refused to take a reasonable cause drug screen, and, for this transgression, dismissal is an appropriate penalty.

AWARD

Claim denied.

Form 1
Page 4

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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 1st day of November 2010.