

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Soo Line Railroad Company (formerly Chicago, Milwaukee,
(St. Paul and Pacific Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Machine Operator S. W. Dummer for allegedly '... being under the influence of marijuana on May 7, 1985....' was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File C #27-85/D-2697).

(2) The claimant shall be reinstated with seniority and all rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

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 employees 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 waived right of appearance at hearing thereon.

Claimant was recalled from a furloughed status to fill a machine operator's position on Gang No. 5663 at Lucerne, Missouri. Along with Foremen, Assistant Foremen and other machine operators, he was required to attend an orientation session on May 6 and 7, 1985. During the May 7, 1985, session, Claimant's conduct was allegedly impaired so as to alert two Carrier officers as to his condition. He was asked to take a physical examination to determine his fitness for service. As a part of this physical he was requested to participate in a drug screen which he agreed to do. The report on the drug screen allegedly indicated evidence of marijuana in Claimant's urine. On the basis of the observations of two Carrier officers and the results of the drug screen, Claimant was discharged on May 10, 1985. The notice of discharge stated:

"Your dismissal from service is as a result of being under the influence of marijuana on May 7, 1985 when you reported for duty on Gang 5663 at Lucerne, Missouri."

Following his dismissal Claimant asked for and received an investigation. After the investigation was concluded the dismissal was affirmed.

The Organization appeals Claimant's dismissal on a number of bases, not the least among them a challenge to the drug screen, the manner in which it was administered, the custody of the sample and the reliability of the test itself. Much of the material it has submitted to our Board in support of this facet of its argument was never presented on the property. We, therefore, are left with no alternative, under well defined holdings of this Board, to disregard this material.

Other challenges concerning the drug screen, which were handled on the property, address the type and quality of the evidence; i.e., the container used was not free of contaminants, the lab report was not signed, the level of the substance within the system is not noted, etc., will be dealt with when we consider the totality of the evidence developed at the hearing.

With regard to other procedural and due process challenges of the Organization, some of these too were never raised while this matter was being handled on the property, and with regard to those that were handled on the property we do not find that the investigation and subsequent appeal were handled in a manner inconsistent with the parties Agreement and that Claimant's due process rights, as afforded by the Agreement, were breached.

In looking at the merits of the matter we find that testimony in the investigation concludes that Claimant was observed by the Project Manager to be very drowsy with his head nodding while attending the orientation session. Additionally, his eyes were glassy and his attention span was lacking. During this same period, Medical Department personnel, a Carrier Assistant Manager of Rehabilitation Services, witnessed these same characteristics in Claimant's behavior as well as the fact that he was dozing off during the sessions. (Her attention had been directed to Claimant because when he had completed a Placement Health Questionnaire he indicated that he had not incurred any injuries while previously working for the Carrier, which she knew was a mistake, and she wanted to interview him to correct the form.) Claimant, in the opinion of both Officers, was exhibiting manifestations of alcohol or drug impairment.

In the investigation the observations of these two witnesses is not challenged in any fashion. In fact, after complete review of the entire record, we fail to find any evidence, any place, disputing their descriptions of Claimant's condition as not being factual.

Moreover, when Claimant was told why he was being sent for a physical examination, which would include a drug screen, he at first only challenged being singled out for the test, contending that there were others in the session that could have been in the same condition. Also, Claimant is reported to have stated to the Assistant Manager of Rehabilitation Services, in response to her opinion about his condition:

"...that means that I won't be able to work this year."

It would seem that sufficient evidence was available to Carrier's Project Manager to establish that Claimant was in an impaired condition, thus in violation of Rule G at the time that he reported for work. Accordingly, even if we were to accept as correct, which we do not, the contention of the Organization that the confirming drug screen was technically defective, a basic prima facie case for a Rule G violation, nevertheless, has been established.

The Claimant, as is the case of all railroad employees, cannot be disciplined or dismissed unless adequate proof exists supporting a violation of Carrier rules. The proof required need not reach the level necessary for a conviction in a criminal matter. It must, though, be sufficient to establish with reasonable certainty a violation of the rule involved. The proof cannot be surmise or can it be speculative. On the totality of the evidence in this case we are persuaded that Carrier has met its proof burden under accepted norms for this industry.

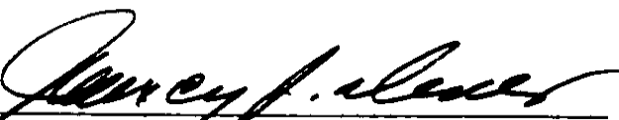
Reporting for duty under the influence of drugs or alcohol is a serious indiscretion. Carrier need not retain in its service a machine operator that exhibits such a disregard for his own well being and the safety of others. The discipline of dismissal will not be disturbed, and the claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.