

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company (former St.
Louis-San Francisco Railway Company)

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

(1) The dismissal of Mr. B. G. Corbin, Jr. for alleged failure to pass physical examination (drug screening test) and/or failure to cooperate with EAP Counselor Ty Owens was without just and sufficient cause, arbitrary, on the basis of unproven charges and in violation of the Agreement (System File B-2050/EMWC 86-7-9B).

(2) The Agreement was further violated when the Carrier refused to afford Mr. B. G. Corbin, Jr. an unjust treatment hearing as required by Rule 91(b) in connection with the violation referred to within Part (1) hereof.

(3) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charge 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 employe or employes involved in this dispute are respectively carrier and employes 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 is employed as a track foreman by the Carrier. On April 25, 1986, Claimant underwent a physical examination that included a drug screening. The results of the drug test were positive for marijuana. On June 2, 1986, Carrier administered a second drug screening to Claimant which resulted in a second positive result for marijuana. On June 17, 1986, Carrier notified Claimant that he was being removed from service and placed on a medical leave of absence. The Organization thereafter filed a claim on Claimant's behalf asserting that he had been unjustly dismissed from service.

This Board has thoroughly reviewed the record in this case, and we find that the Claimant was properly removed from service after failing to pass a routine physical exam. The reason for the failure was his inability to pass the drug screening urine test which indicated a positive finding for marijuana. In accordance with the Carrier's policy, the Claimant was properly removed from service since, after the test, he was considered medically ineligible to continue to work.

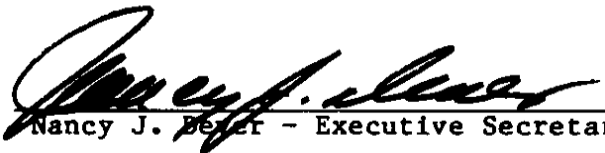
The Carrier was within its rights when it held the Claimant out of service since he was not medically qualified. In this situation, there was no requirement under the Rules for the Carrier to hold an investigation.

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 4th day of May 1989.