

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 29682  
Docket No. MW-30453  
93-3-92-3-191

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Machine Operator L. C. Lindsey for alleged '... use of Marijuana (Cannabis) while on duty as Machine Operator, which was discovered January 28, 1991....' was without just and sufficient cause, arbitrary, capricious and on the basis of unproven charges (System File MW-91-24-CB/500-58-A).
- (2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be reinstated with seniority, vacation and all other rights unimpaired, including credit toward vacation for all days withheld from service, his record shall be cleared of the charges leveled against him and he shall be compensated for 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 employe 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.

While on duty as a Machine Operator on January 29, 1991, Claimant was involved in a vehicular accident. Pursuant to Carrier policy, Claimant was asked to submit to drug testing following this accident. Claimant did not object to such testing, which ultimately showed a level of 104 ng/ml of delta-9-tetrahydrocannabinol (THC), the active ingredient in marijuana. Claimant was subsequently removed from service and directed to attend an investigation, at which he was charged with violating Rule G.

At the hearing, Claimant admitted he had used marijuana on December 31, 1990, and had been "around a lot of marijuana smoking" between that time and the date of this incident. He denied, however, that he had used marijuana since December 31, 1990. Under the circumstances, this Board does not find support for the Organization's suggestion the positive test was the result of Claimant's use of marijuana some four weeks earlier, compounded by passive inhalation since then. There is no medical evidence to support a conclusion these factors could have produced these results in excess of 100 ng/ml. See Third Division Award 28128.

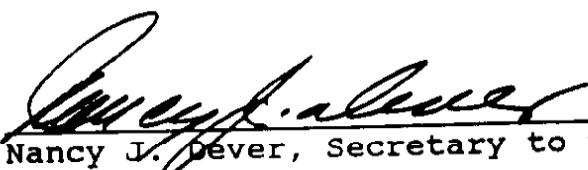
Although the Organization raises the issue of the relationship between a positive test and impairment for the first time before this Board, and we are compelled not to consider the merits of such an argument under the rules of the Board, we note that the Carrier's rule proscribes the illegal use of drugs, whether on duty or off duty. Thus, a positive test is prima facie evidence of a violation of the rule.

The charge against Claimant having been proven, we do not find the discipline imposed to be arbitrary or unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 29th day of June 1993.