

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30252
Docket No. SG-30802
94-3-92-3-616

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(and
(Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the General Committee, Brotherhood of Railroad Signalmen, on the Chicago North Western Transportation Company that:

- (a) Carrier violated the current Agreement, as amended, between the Brotherhood of Railroad Signalmen and the Chicago North Western, especially Rule 51, when Mr. Fred Claxton, following formal investigation held on August 1, 1991, "To determine your responsibility for violating Rule "G", as contained in Time Table No. 11, effective Nov. 18, 1990, when on July 9, 1991, a urine sample provided by you, as part of a D.O.T. physical, resulted in a positive test for a controlled substance", was issued the discipline of dismissal.
- (b) Carrier should now be required to reinstate Mr. Fred Claxton to his former position as assistant signalman with all seniority rights and benefits restored and compensated for all time lost."

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.

Claimant was employed as an Assistant Signalman on Job 400-02 (Crew 2) in Berkeley, Illinois. On July 9, 1991, Claimant was required to take a Department of Transportation (DOT) physical examination in accordance with DOT Safety Regulations. A urine sample taken during that physical tested positive for cocaine in Claimant's system. As a result, Claimant was removed from service pending investigation. Subsequent to the investigation, Claimant was dismissed from Carrier's service.

The Organization attempted to discredit the urinalysis results by claiming: 1) that the required "chain of custody" of Claimant's specimen was not maintained; and 2) that a subsequent urinalysis to which Claimant voluntarily subjected himself yielded negative results. Neither argument is persuasive. The Organization failed to discredit the chain of custody. Further, once an initial positive test result was obtained, a confirming chromatography/mass spectrometry test was performed by the laboratory. That test also yielded positive results.

The two urinalyses to which Claimant voluntarily submitted took place eight and thirteen days, respectively, from the date his initial urine specimen was obtained. Moreover, Claimant did not submit "chain of custody" verification or certification of the laboratory performing analysis of the later specimens in his defense. Accordingly, they cannot be considered to refute the initial test results.

Under the circumstances, the Board finds no basis upon which to disturb Carrier's assessment of discipline.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.