

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31008
Docket No. SG-31242
95-3-93-3-161

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Co. (SP):

Claim on behalf of J.P. Walton for payment of three hours at the time and one-half rate account Carrier violated the current Signalmen's Agreement, particularly Rules 12, 68 and 70, when it required the Claimant to report for duty in connection with a drug test on January 31, 1992, and failed to compensate the Claimant for such duty. Carrier's File No. Sig 92-4. General Chairman's File No. SWGC-436. BRS File Case No. 8975-SP."

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 waived right of appearance at hearing thereon.

Following his dismissal from service on a proven charge of violation of Rule "G," Claimant, on April 24, 1991, through the auspices of and with the concurrence of his representative Organization, accepted a leniency reinstatement to service subject to seven specifically detailed conditions, one of which read as follows:

"You will submit to random unannounced alcohol and/or drug tests for at least one (1) year."

On January 31, 1992, while off duty, Claimant was instructed and required to submit to a drug test. The Organization on his behalf initiated the claim which is the subject of this dispute alleging a violation of Rules 12, 68 and 70 of the Agreement. In their presentation to the Board, the Organization argued primarily that Agreement Rule 70 is pertinent to this dispute. Rule 70 reads as follows:

"Rule 70 (Examinations)

Examinations or re-examinations as employees may be required to take, shall, if possible, be conducted during regular working hours without deduction in pay therefore."

The Organization contended that the conditional reinstatement agreement of April, 1991, did not abrogate other rights which Claimant had under the Agreement. It argued that there is no evidence to suggest that the drug test in question could not have been made during Claimant's working hours.

The Carrier insisted that Claimant specifically agreed to submit to certain intrusions into his off-duty life as conditions of his leniency reinstatement to service and that his rights under the Agreement were redefined for the period of and under the conditions of the reinstatement agreement.

From the record of this case, the Board concludes that under the conditions set forth in the reinstatement agreement to which both Claimant and the Organization agreed, Carrier had the unilateral right to require "random unannounced alcohol and/or drug tests for at least one (1) year." The random unannounced test which was required by Carrier on January 31, 1992, was an acceptable application of the terms and conditions of the special agreement which, in the circumstances outlined in the agreement and for the term of the special agreement took precedence over the general rules of the Agreement.

Therefore, the claim in this case is denied. Support for this position is found in Decision 5874, Case 1362, Supplemental List No. 91 of Special Board of Adjustment No. 18.

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AWARD

Claim denied.

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 26th day of July 1995.