

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31021  
Docket No. SG-31581  
95-3-93-3-583

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

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

STATEMENT OF CLAIM: "Claim on behalf of General Committee of  
the Brotherhood of Railroad Signalmen  
on the Chicago and North Western  
Transportation Company (CNW):

Claim on behalf of J. B. Bunger for reinstatement to service with payment for all lost time and benefits and with seniority unimpaired and the record of discipline removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 51, when it failed to provide the Claimant with a fair and impartial hearing on charges of violating Rule G and then imposed the harsh and excessive discipline of dismissal from service. Carrier's File No. 79-92-55. General Chairman's File No. S-AV-94, BRS File Case No. 9080-CNW."

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.

The Claimant was actually charged with three different rule infractions, two of which will be discussed in other decisions before this Board. In this case, the Claimant is charged with a violation of Rule G after testing positive for THC (cannabinoids)

and Amphetamines. He was required to submit to the drug test after his actions allegedly caused an accident which resulted in damages in excess of \$500.00.

The Organization insists that the drug test itself was faulty because the Chain of Custody Form for the Claimant's urine specimen contained unexplained deletions. In addition, they point out a difference in the specimen numbers and the numbers from the test documentation.

The Organization also argues that even if the charges against the Claimant were proven, the discipline issued was harsh and excessive. They hold that the Carrier issued the discipline against the Claimant without considering his long record of service to the Carrier.

The Carrier argues that it has been standard practice on the property to dismiss employees guilty of violating Rule G. They further argue that the Chain of Custody Form was sufficient to prove the Claimant's specimen was properly handled. Finally, they determined that despite the Claimant's tenure, leniency was not appropriate in view of the Claimant's conduct and dismissal from the Company on three separate occasions.

The Board has reviewed the charges against the Claimant, as well as, the evidence produced at the hearing on the property. We are convinced that there was ample evidence that the urine specimen was properly handled and the positive test results were accurately attributed to the Claimant. For these reasons, we conclude that the dismissal was appropriate.

Under the circumstances of this case, the Board has no prerogative to direct leniency. The Carrier has the prerogative to make the decision as to whether they choose to grant leniency. Certainly, there is nothing to prevent the Claimant from requesting a return to employment on the basis of leniency in the future. Of course, the Claimant must be aware that such a request can only follow proof that he has altered his life style and can once again be a reliable employee.

AWARD

Claim denied.

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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.