

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31137  
Docket No. MW-31671  
95-3-93-3-693

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of B&B Mechanic G.V. Pfistner for alleged failure to comply with the Conrail Drug Testing Policy as instructed, as evidenced by the urine sample provided on August 3, 1992 testing positive, was arbitrary, capricious and on the basis of unproven charges (System Docket MW-2809).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record shall be cleared of the charges 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 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.

On September 24, 1990 Claimant's drug analysis was positive for an illegal drug. Pursuant to the Drug Policy in place, Claimant was obligated to furnish a negative test within a specified period of time. On February 13, 1991, he was qualified for service on the conditional basis of having to submit to random

tests for three years following reinstatement plus he was instructed "\*\*\* to keep your system free of such substances."

On August 3, 1992, he again tested positive for an illegal drug. Hearing was timely set and following same, Claimant was dismissed from service.

The Employee's challenges before this Board to the Carrier's right to discipline have to be dismissed as being new arguments never before raised on the property.

Suffice to say, Claimant tested positive for a prohibited drug. The Employee's did challenge the minimum levels tested for but regardless of those minimums, Claimant did test positive. Even the negative sample Claimant secured from a testing facility of his choice does not erase the earlier positive sample. Twelve days between tests permits the system time to further cleanse itself of remnants of the prohibited drug. Carrier has committed no error in refusing to accept the negative sample from an unknown, uncertified lab that was tested 12 days after the positive test.

Claimant was offered a final chance to salvage his career on February 13, 1991, when he was reinstated following a failed drug test in September of 1990. His return was conditional. He was obligated to remain drug free and he was subject to random tests for three years following his return to service. He failed to abide by the terms of his conditional re-employment. The claim is denied.

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 September 1995.