

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31139  
Docket No. CL-31677  
95-3-94-3-66

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

PARTIES TO DISPUTE: (Transportation Communications  
(International Union  
(The Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11005) that:

1. Carrier violated the Clerks' Rules Agreement when it issued discipline of actual dismissal to Operator/Leverman, Mr. C.J. Pickett on the date of March 10, 1993, following formal investigation held on March 4, 1993.
2. Carrier's action in this case violated Rules 23, 24, 29 and any associated rules of the TCU Agreement in effect between the parties.
3. Carrier shall now be required to reinstate Claimant, Mr. C.J. Pickett to service with pay for all time lost, seniority, vacation and all other rights unimpaired effective March 10, 1993 and with claim continuing until corrected."

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.

Claimant was suspended from service on February 22, 1993,

"\*\*\*for your alleged violation of T.R.R.A. Rule "G" when you tested positive on a reasonable cause urine test administered at 10:30 P.M., Wednesday, February 17, 1993\*\*\*."

On the same date, i.e., February 22, 1993, Claimant was notified that an Investigation was being scheduled, following which Claimant was dismissed from Carrier's service.

The Organization has voiced several arguments in an effort to throw out or at least modify the discipline of dismissal but these have been neutralized by the Carrier, in the on property handling. Claimant's culpability was clearly established for the charges assessed by the urinalysis and the observations of Carrier's witness.

The only other factor to be determined is the discipline. Was it arbitrary, harsh, etc. or was it appropriate?

A review of the employee's work record establishes that Claimant, from December of 1979 to February 22, 1993 had been disciplined five times.

He served three suspensions of 15, 30 and 45 days for various infractions and he had been dismissed twice (both times the Board reinstated Claimant with no pay for time lost). Furthermore, there is no evidence of remorse by Claimant, nor is there any evidence of Claimant taking any corrective action.

Obviously Claimant has not learned by his mistakes and does not understand that Carrier's Rules are to be followed. The Board will not interfere with the discipline assessed.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.