

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31222  
Docket No. CL-31370  
95-3-93-3-539

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications  
( International Union  
(  
(Elgin, Joliet & Eastern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10984) that:

1. Carrier violated the effective agreement when it removed Operator Donald Lightfoot from service effective September 8, 1992, and, following an investigation on September 12, 1992, it dismissed Mr. Lightfoot from service effective September 18, 1992, without just cause;
2. Carrier shall now restore Mr. Lightfoot to service with his seniority and all other rights unimpaired, shall compensate him for all time lost and shall clear his record of the charges placed against him."

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 May 17, 1991, Claimant was dismissed from service for violating Rule G. On April 30, 1992, Public Law Board No. 5203 ordered Claimant conditionally reinstated. Carrier advised Claimant of the conditional reinstatement and Claimant agreed to those conditions on May 15, 1992. The conditions included that Claimant contact Carrier's Employee Assistance Program Administrator, submit to a complete evaluation and undertake and complete any recommended treatment and aftercare program, and, for a period of three years following return to service, provide Carrier with documentation of his participation in appropriate aftercare programs by the tenth day of each month. Claimant's reinstatement was on a last chance basis.

On September 8, 1992, Carrier notified Claimant to appear for an Investigation on September 11, 1992, charging that Claimant had failed to comply with the conditions of his reinstatement by failing to enroll in the EAPA's recommended aftercare program and failing to document his participation in the aftercare program. The hearing was postponed to and held on September 12, 1992. On September 18, 1992, Claimant was advised that he had been found guilty of the charges and that he was dismissed from service.

There is no dispute that Claimant failed to enroll in an aftercare program. The Organization contends that Claimant was misled. It relies on a July 9, 1992, letter from the EAPA to Carrier's Medical Director outlining the EAPA's recommendations for Claimant's return to service. The letter, a copy of which was sent to Claimant, invited the Medical Director to contact the EAPA with any questions at a toll-free telephone number. The number was useable only for calls within the State of Pennsylvania. Claimant, who resided in the State of Indiana, was unable to contact the EAPA at the number provided and, therefore, was unable to get further information about the aftercare program.

Carrier contends that Claimant failed to comply with the reinstatement conditions. According to Carrier, Claimant had the responsibility for enrolling in the aftercare program and documenting the enrollment. Carrier argues that the Pennsylvania in-state toll-free telephone number was provided to Carrier's Medical Director because he was located in Pennsylvania. Carrier contends that Claimant was not misled because Claimant had the national toll free number for the EAPA in the May 15, 1992, reinstatement agreement; because the July 9, 1992, letter also listed a second telephone number for the EAPA which Claimant could have used but failed to use; and because Claimant could have obtained further information from a Carrier or Organization official but failed to ask for it.

The Board has reviewed the record. Our review leads us to conclude that the claim must be denied. Claimant was reinstated on a last chance basis. He admitted that he failed to enroll in the aftercare program and, consequently, violated a key condition of his reinstatement.

Claimant's excuse that he was misled by the provision of the in-state Pennsylvania toll-free number in the letter to Carrier's Medical Director does not persuade us to decide otherwise. The letter also contained the EAPA's regular phone number which Claimant could have called. Moreover, Claimant's conditional reinstatement agreement of May 15, 1992, contained the EAPA's nationwide toll-free number. Claimant's only reason for not calling that number was his speculation that his children or his wife may have thrown the May 15, 1992, agreement away. That explanation is not acceptable. It was Claimant's responsibility to safeguard such an important document. Furthermore, Claimant could have obtained assistance from a Carrier or Organization official. Indeed, after he was notified of the Investigation and charges, he did seek assistance from the Organization and was able to contact the EAPA. He offered no explanation for failing to do so sooner.

The evidence clearly established that Claimant failed to fulfill the conditions of his last chance reinstatement. Under these circumstances, his dismissal was proper.

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 1st day of November 1995.