Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31864
Docket No. MW-32756
97-3-96-3-54

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

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE:(
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Mr. P. A. Seath for allegedly '. . .smoking marijuana on October 25, 1994 while on duty (admission) and subsequently while under the terms of Rule G Bypass in conjunction with the October 25, 1995 incident you tested positive for cocaine metabolites on a company sponsored urine drug screen (admission).' was arbitrary, unwarranted and excessive [System File SPG-TC-9626/12(95-472) CSX].

(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 benefits unimpaired 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 were given due notice of hearing thereon.

In October 1994, the Claimant was assigned to a Machine Operator position on ZPG Gang 5XT5.

On October 25, 1994, the Claimant was working near Holgate, Ohio, on the Willard Subdivision. The Claimant was observed smoking a marijuana cigarette with another employee. On October 26, 1994, the Claimant was charged with an alleged violation of Rule G.

On October 31, 1994, the Claimant accepted the Carrier's offer to enter its Rule G Bypass program and enroll in an approved rehabilitation program and forego a disciplinary Investigation. During the next few months, he continued in the Carrier's EAP program. Subsequently on February 7, 1995, he was instructed to undergo a drug screen test, the results of which indicated the presence of cocaine metabolites.

Following the incident on February 7, 1995, the Claimant received a notice to appear at a formal Investigation on March 6, 1995 to develop the facts and place his responsibility, if any, in connection with the original charge of his use of marijuana on October 25, 1994. The Investigation was postponed and subsequently held on March 27, 1995.

Following the Investigation, the Claimant was advised by letter dated April 13, 1995 that he was dismissed from all service with the Carrier for smoking marijuana while on duty on October 25, 1994 and testing positive for cocaine metabolites on February 7, 1995.

The record reveals that the Claimant's dismissal was appealed by the Organization up to and including the highest designated officer of the Carrier, but the parties were unable to reach a satisfactory resolution of the claim.

The transcript of the Investigation reveals that there is no dispute as to the factual situation of the incidents involved.

The Claimant admitted that he smoked marijuana on October 25, 1994. He signed a Rule G Bypass Agreement which permitted him to return to work under the terms of that agreement. The Claimant admitted that he agreed with the results of the

short term drug screen test on February 7, 1995 which showed positive for cocaine metabolites.

The Organization in its handling on the property did not dispute the facts, but took the position that personal and stressful problems were encountered by the Claimant because of the lifestyle associated with being forced to live away from home and his family caused anxiety and severe depression and, accordingly, dismissal is harsh, unjust and unrealistic.

Our thorough review of the record can only lead to one conclusion. The Claimant violated Rule G on two occasions. He was afforded an opportunity to participate in the Rule G Bypass program and signed the Agreement knowing full well the consequences of a second proven drug use violation.

We cannot concur with the Organization's position that working away from home is an excuse for the Claimant's actions.

We concur with the position taken by the Carrier's top officer in his letter of December 5, 1995 to the Organization, particularly the last two paragraphs of the letter which we quote as follows:

> "There are approximately 1,200 employees in our System Production Teams, all of which, on occasion work away from their homes and families, but who elect to separate themselves from drugs and drug use. While we sympathize with Mr. Seath's problems, whether real or imaginary, we simply cannot condone nor allow employees who choose to indulge in the use of illegal drugs to remain in our work force.
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> "The effect of drugs in the Railroad Industry is well known and the results have been devastating. The Carrier would be remiss in its obligation and responsibility if it had not taken the course chosen here. There is no justification for disturbing the discipline assessed in this case and the claim remains declined in its entirety."

Accordingly, it is the decision of this Board that the claim be 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 4th day of March 1997.