

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31932
Docket No. MW-32089
97-3-94-3-470**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE:(
(The Denver and Rio Grande Western Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Truck Driver J. V. Smith on June 30, 1993 for alleged violation of Rules G, I and 607 of the General Code of Operating Rules and Rules 1005, 1007 and 1606 of the Southern Pacific Lines' Safety and General Rules For All Employees was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File D-93-33/MW D93-32).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be returned to service with seniority and all other rights 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.

Prior to his dismissal, Claimant was employed as a Truck Driver with headquarters at Denver, Colorado. On June 9, 1993, the hi-rail Division Truck, Unit 7801-9048U, which Claimant was driving, hit a power pole guy wire at the intersection of 4th Avenue and Osage in Burnham Yard. Following the accident, Claimant was required to submit to a urinalysis drug screen. The result of that test was positive for both marijuana and cocaine metabolites. Claimant was then directed to appear for an Investigation. Following the Investigation, Claimant was dismissed from Carrier's service.

The Organization raised a threshold issue concerning the fairness of the Hearing. A careful review of the transcript in this matter fails to support the Organization's position. The fact that Claimant refused to testify in his own behalf at the Investigation was Claimant's decision, and there is no indication that he was coerced into that silence by the Hearing Officer. Throughout the Hearing the Hearing Officer conducted himself in a fair manner.

The Organization also attempted to cast doubt upon the veracity of the urinalysis results. Evidence on the record before this Board indicates that the chain of custody was maintained intact, and that the positive results were correct. Finally, the Organization notes that Claimant had a previously unblemished record over a span of 18 years of employment with the Carrier. As we have consistently held on this and other Boards, unless the discipline imposed is arbitrary, excessive or capricious, the matter of leniency is a decision left to the Carrier's discretion. (Second Division Award 9396).

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.