

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31935  
Docket No. MW-32194  
97-3-94-3-619**

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 suspension from service on August 26, 1993 and subsequent dismissal of Track Laborer G. T. Dunn on September 19, 1993 for alleged violation of Rules 1005, 1007 and 1102 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-93-79/MW D94-2 (DUNN)].**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall receive the benefit of the remedy prescribed by the parties in Rule 29(d)."**

**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 from service, Claimant G. T. Dunn, was employed by Carrier as a Track Laborer at the North Yard in Denver, Colorado. On the morning of August 19, 1993, Claimant was oiling switches. In the vicinity of Switch 3, he slipped and injured his back. He reported his injury and was transported to a health clinic for treatment. At approximately 11:00 A.M., he was required to provide a urine specimen for post accident substance abuse testing purposes. He was allowed to return to work, and remained in service until August 26, 1993. When the Carrier received the test results from Claimant's August 19, 1993 urinalysis, it removed him from service pending a Hearing. The results of Claimant's sample were reported to be positive for alcohol at the .04% level (the cutoff is .02%). A formal Investigation was held on September 9, 1993, following which Claimant was dismissed from Carrier's service.

The Organization raised two procedural objections concerning Carrier's actions in this case. First, it maintains that Claimant was not notified of the reasons for the disallowance of his claim within the requisite 60 day time period. Second, the Organization asserts that Claimant was not afforded a fair and impartial Hearing, in that the Roadmaster who charged him also testified at the Hearing, and was the officer of first level appeal. With respect to the first objection, the denial letter states that Carrier did not violate the Agreement when it dismissed Claimant, and that the Rules cited in the Organization's appeal letter do not support its claim. The letter sent to Claimant following the Hearing was entirely clear concerning the reasons for Claimant's dismissal, and the letter denying the Organization's appeal simply confirmed the earlier finding. No further detail was required. With respect to the second objection, because the Roadmaster was the Carrier officer in charge when Carrier received the results of Claimant's urinalysis, he would reasonably be expected to be the one to charge Claimant and to testify at the Investigation. Another Carrier officer acted as Hearing Officer. A third Carrier officer wrote Claimant notifying him of his dismissal from service and responded to the initial appeal. This Board finds no evidence on this record to indicate that Claimant was afforded anything other than a fair and impartial Hearing.

With respect to the merits of this case, the Carrier maintains that the evidence on the record is clear and convincing. It notes that dismissal is the rule, rather than the exception for such violations. The Organization questions the accuracy of the test results, including the chain of custody. The Organization also point out that even if,

*arguendo*, Claimant is guilty as charge, he had an unblemished service record spanning more than 14 years prior to this incident. Accordingly, the penalty of dismissal is excessively harsh.

A careful review of the record indicates that there is no basis upon which to question either the chain of custody of the urine sample provided or the results of the analysis. Further, it has long been held by this and other Boards that dismissal for a "substance abuse" violation is neither unreasonable nor excessive. (Second Division Award 11981; Third Division Award 30252). When, as here, the employee has an otherwise unblemished record, the consequences of failing a urinalysis are particularly tragic. Nevertheless, in these cases, the Board has consistently refrained from substituting its judgment concerning appropriate discipline, and has left the question of "leniency" to the sole discretion of the Carrier. (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.**