

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32340
Docket No. MS-32039
97-3-94-3-412**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Larnell Taylor, Jr.
PARTIES TO DISPUTE: (
(Northeast Illinois Regional Commuter Railroad
(Corporation (METRA)**

STATEMENT OF CLAIM:

"This is to serve notice, as required by Rules of the National Railroad Adjustment Board, of my intention to file ex parte submission covering an unjust dispute between Larnell Taylor Jr. and METRA Railroad 547 W. Jackson. Involving thees (sic) question.

- (1) Carrier dismissal and handling stemming from this case a medical handicap to Mr. Taylor Exhibit - 1A - 1B. After being contacted the EAP Counselor shall evaluate the employee to determine whether or not the employee may safely be returned to service. This was not done. EAP Counselor Thad Williams from Besinger Dupont Ass. 20 N. Wacker Drive Chicago, Ill 60606.**
- (2) Mr. Hayward Granier General Chairman BMW 302 Broadway Suite 'B' P.O. Box 329 Mayfield Ky., 66101. When the BMW mutually agreed to Item '12' in this agreement. They must have knowed that the obligation to address any signing to a agreement at any time is a must. Therefore my rights were denied. Exhibit 1-C.**
- (3) METRA and the EAP joint effort to denied my medical statement from Dr. Sander Genser is not right. I have sent a release form to both party's to have there medical department's evaluate the Exhibit 1-A - 1-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.

Claimant Larnell Taylor, Jr. was hired as a Trackman on July 30, 1987 and was dismissed from service while regularly assigned as a Mechanic on October 12, 1992 as a result of the finding after due investigation that he violated Employee Conduct Rule "G" with respect to being intoxicated while on the property. As per the Prevention Program Companion Agreement signed by the Brotherhood of Maintenance of Way (herein "the Organization") and Carrier on May 8, 1985, Claimant agreed to enter into the Rule "G" Rehabilitation/Education Program and abide by its terms. The pertinent sections of that Agreement are reprinted below.

“* * * * *

2. Participation in the Rule 'G' R/E Program shall continue for a period of 12 months unless the employee elects to withdraw from the Program or fails to follow the course of treatment established by the Employee Assistance Program (EAP) Coordinator.

* * * * *

6. After being contacted, the EAP Counselor shall evaluate the employee to determine whether or not the employee may safely be returned to service and the course of treatment which the employee should follow.

* * * * *

9. If at any time during the 12-month period referred to in paragraph '2', the employee fails to follow the course of treatment established by the EAP Counselor, the Carrier shall remove the employee from the Program. If the employee has been returned to service, the Carrier shall, without the necessity of further disciplinary proceedings, also remove the employee from service and the employee shall revert to the status of a dismissed employee."

As a result of an evaluation by the EAP Counselor under paragraph 6 above, Claimant was returned to service on a probationary basis on January 12, 1993. On August 11, 1993 Carrier was advised by the EAP Director that Claimant had failed to follow the recommended course of treatment. Carrier immediately notified Claimant that he was being removed from service and returned to his prior status of dismissed employee for failure to comply with the terms of the Program. It appears that Claimant's non-compliance had to do with the results of a drug test administered to him under the auspices of the EAP Program.

The Organization filed and progressed a claim on behalf of Claimant, who ultimately appealed directly to the Third Division, arguing that Claimant should be returned to the Program since the EAP Counselor failed to properly evaluate and diagnose Claimant's condition in violation of Paragraph 6 of the Agreement. During the correspondence on the property, the Organization submitted a letter from the Medical Director of Turning Point, an in-patient rehabilitation facility which Claimant entered on September 7, 1993 after his dismissal, indicating that Claimant suffers from a dysthymic disorder which interacts with his alcohol abuse creating difficulty for him to maintain sobriety. The letter indicated that Claimant was being treated by prescription medication which should greatly help "his likelihood of achieving long-term sobriety."

During handling on the property, Carrier directed the EAP to conduct a thorough investigation of this medical condition, and received a response that no information was ever given to it during Claimant's treatment indicating such a disorder, and that Claimant had refused to sign the appropriate release of information form permitting the EAP to speak with the staff at Turning Point. Carrier argues that Claimant's

after-the-fact outside treatment is irrelevant to whether its actions were in accordance with the terms of the Prevention Program Companion Agreement.

Carrier argues that such Agreement was jointly negotiated and entered into between itself and the Organization, who spent much time approving the EAP Counselors and Director, agreeing upon their expertise in this area. Carrier contends that the EAP Counselor's evaluation and recommendation for course of treatment is not challengeable under the language of paragraph 6, and that it acted in accordance with the Agreement in returning Claimant to dismissed status. Carrier also argues that Claimant could not be returned to the Rule "G" Program at this stage under the provisions of paragraph (1) thereof.

Upon a complete review of the record, the Board finds that Carrier's action in returning Claimant to dismissed status on August 11, 1993 for failing to comply with the terms of the Rule "G" Program is not violative of the Agreement. There is no evidence disputing the EAP's determination that Claimant failed to follow the Counselor's recommended course of treatment. Claimant has failed to sustain his burden of proving that the decision concerning such course of treatment made by the EAP Counselor was arbitrary, in bad faith or unreasonable under the facts and circumstances as existed at the time. This Board has consistently upheld Carrier's similar treatment of employees who violate the terms of their conditional return to service agreements, noting that by adopting this Rule "G" program Carrier has provided the employee with a second chance he would not otherwise have had to get his life in order and return to work. See Second Division Awards 12175, 12999, 13026; Third Division Award 31199; Fourth Division Award 4979.

While expressing the hope that Claimant has been successful in his subsequent rehabilitation efforts, the Board must deny this claim.

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 13th day of November 1997.