

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32410
Docket No. MW-32998
98-3-96-3-387**

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

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees**
(**Southern Pacific Transportation Company**
(**Denver and Rio Grande Western**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it improperly withheld Mr. D. T. Gonzales from service commencing March 14, 1995 for allegedly failing to pass a urine screen test when he applied for a position with the Car Department in December 1994 (System File D-95-27/MW M95-9).**
- (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 commencing March 14, 1995 and continuing until he is reinstated to service."**

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.

On September 7, 1993 Claimant was furloughed from his Maintenance of Way position. In December 1994 Claimant applied for a position in Carrier's Mechanical Department. Carrier required Claimant to take and pass a physical examination which included a urine drug screen. Carrier contends Claimant tested positive for drugs on December 21, 1994. Based on the alleged positive drug test Claimant's application was rejected and Claimant remained on furlough status within the Maintenance of Way Department.

Carrier's Medical Department alerted EAP of this alleged positive drug test. EAP contacted Claimant in February 1995. EAP allegedly told Claimant that if he entered treatment he could qualify for release to duty in 60 to 90 days -- otherwise he would not so qualify for 120 days. On February 27, 1995 Carrier recalled Claimant to duty effective March 14, 1995. However, the Medical Department refused to clear him for duty because Claimant was not in a treatment program. On May 1, 1995, Claimant agreed to EAP treatment program and on June 5, 1995 he was cleared to return to duty by the Medical Department. Claimant returned to duty on June 6, 1995.

This Board finds that there is no documentary or testimonial evidence in the record to support the Carrier's assertion that the Claimant tested positive for illegal drugs. Claimant denied he had tested positive for drugs in December 1994 and produced a Drug Free Card issued on December 21, 1994. Carrier did not challenge the accuracy or validity of that Drug Free Card.

This Board concludes that the Agreement was violated by improperly withholding Claimant from service between March 14, 1995 and June 6, 1995.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of January 1998.