

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32591
Docket No. MW-32627
98-3-94-3-620

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

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The suspension pending hearing on August 11, 1993 and dismissal of Welder Foreman K. A. Linzy on September 14, 1993 for alleged ‘... violation of General Rules B, 600, 607(1), 607(3) and 607(4) of Form 7908. . . .’ was arbitrary, capricious, based on unproven charges and in violation of the Agreement (System File D-204/ 940039).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to Carrier’s service with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered as a result of his being withheld from service beginning August 11, 1993 and the subsequent unjustified dismissal.”**

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.

The record evidence establishes that the Claimant was placed on notice that he was subject to termination as the results of a positive drug test, and he agreed to remain drug free following this positive drug test which was taken in 1992. The Claimant was subject to periodic drug testing for a period of five years subsequent to his being reinstated to service in 1992. The Claimant was scheduled for a drug test on July 29, 1993, and when the urine sample he provided was determined by the collector to be "too cold", the Claimant provided a second urine sample at 10:28 A.M. that day. On August 11, 1993 the Claimant was removed from service by the Carrier, based upon a finding that he had tested positive for cocaine and amphetamine.

While the organization has argued on the Claimant's behalf that the Carrier violated his rights to due process because of the manner in which he was suspended from service on August 11, 1993, this Board concludes that the Carrier had the right to suspend the Claimant having concluded that he tested positive for cocaine and thus the Claimant's rights were not violated by his being removed from service.

Additionally, this Board concludes that the Carrier complied with the established procedures for testing urine samples and for maintaining the sanctity of the chain of custody, and that the fact that the first proffered sample was not tested does not detract from the clear and convincing evidence that the Claimant tested positive for a prohibited substance(s).

There is no credibility issue before the Board, and the positive test speaks for itself. The Carrier had just cause to terminate the Claimant's employment.

AWARD

Claim denied.

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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 22nd day of May 1998.