

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32706
Docket No. SG-33840
98-3-97-3-328**

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B &O):

Claim on behalf of D. R. Branch for reinstatement to service with his record cleared and with compensation for all time and benefits lost as a result of his dismissal following an investigation held on May 7, 1996, account Carrier violated the current Signalmen’s Agreement, particularly Rule 50, when it did not hold the hearing within 10 days of the date of the charges, failed to provide the Claimant with a fair and impartial investigation, and assessed harsh and excessive discipline against him. Carrier also violated Rule 50 when it failed to furnish a written decision within 30 days after the investigation. Carrier’s File No. 15 (96-179). BRS File Case No. 10220-B&O.”

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.

After a random drug test produced positive results for a controlled substance on March 21, 1994, Claimant entered the Carrier's rehabilitation program, subsequently returned to service as a Lead Signalman, and was selected for FRA short notice follow up testing on April 8, 1996. Test results were again positive. On April 17, 1996, Claimant was charged with violation of Rule G, FRA Regulation 49 CFR Part 219, and Safety Rule 21. Following an Investigation, he was dismissed from the service of the Carrier on June 12, 1996.

The Organization contends the Carrier's action was excessive and asserts a variety of procedural arguments in support of its request for reinstatement and reimbursement for time lost. Carrier maintains that Claimant was afforded a fair and impartial Hearing in accordance with the Agreement; that it sustained its burden of proving Claimant's guilt; and that the discipline imposed was fully justified.

This dispute serves up again an all too common issue: was Carrier justified in dismissing Claimant from service after evidence of prohibited drugs was discovered in his system while on-duty. In this instance, while the problem is familiar, the facts of the case are uncommonly free of contention. The employee does not question the validity of his test results - he openly admits the charges. He does not deny that he had been subject to follow up testing as a result of a prior Rule G violation two years earlier. He recognizes that he had been given a second chance to stay drug-free and keep his job. He concedes that he had some four days' advance notice of the testing that produced the positive results for cocaine at issue here. He simply says that, based on several alleged procedural errors in the Carrier's handling of his dismissal, he should have a third chance.

We have considered those arguments carefully and conclude that they are without merit. Claimant was properly charged, was afforded a fair and impartial Hearing, took no exception to proceedings he now says were flawed, and, in testifying, plainly acknowledged his breach of Rule 50 for a second time in a two year period. His rights to due process and equity have been scrupulously preserved. It appears to this Board that Claimant now stands fighting froth and ignoring substance.

This Board would disserve all parties if it were to excuse the proven misconduct, or minimize its seriousness and thereby hamper or undercut legitimate future enforcement efforts. As Carrier suggests, and as repeated many times in the Awards of this Board addressing similar claims, the working environment of Signalmen is both demanding and safety intense. The Organization here has worked hard to put the best possible case forward on Claimant's behalf. But on-duty drug and alcohol usage cannot be squared with the duties such employees owe to each other and to their employers to be alert and clear-headed around moving trains and equipment. If any claim is to run point for an attack on that well-established principle, the flotilla will need more boats than appear on the record in this matter.

The Board's function in reviewing dismissal matters is not without limits. In this case, there are no issues of arbitrariness or of failure of proof. The charges are very serious, and the Claimant's guilt is established. The claim must be denied.

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 19th day of August 1998.