

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32721
Docket No. MS-33595
98-3-97-3-3**

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

(Gerald D. Wood

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"1. That Gerald Wood was unjustly dealt with when he was dismissed from service with Conrail on August 28, 1995 without just cause.

2. That Gerald Wood should be restored to service and made whole for his losses, including wages, seniority, benefits, plus interest, and should have all reference to the discipline removed from his record."

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 was dismissed from service for violating Parts 1 and 2 of Carrier's Rule G and Rule 60.3.1 of the Safety Rules pertaining to alcohol and drugs following an

Investigation held September 15, 1995. In addition to testimony about the circumstances surrounding Claimant's behavior on August 28, 1995, his prior disciplinary record was introduced in evidence. This record included a prior dismissal, with leniency reinstatement, following an alcohol and drug policy violation.

The role of this Board is appellate in nature. We do not sit to weigh the evidence and resolve issues of fact. Rather, our role is limited to reviewing the evidentiary record developed by the parties during their handling of the dispute on the property. That review seeks to ascertain whether the Carrier's disciplinary action is supported by substantial evidence. If it is, we do not substitute our judgement for that of the Carrier.

The instant record reveals substantial evidence supporting Carrier's decision. It contains the testimony of three supervisory employees, one of whom had received training in the observation of employees suspected of being under the influence of alcohol or drugs. The record also includes the testimony of two co-workers. They describe similar abnormalities in Claimant's behavior consistent with alcohol and/or drug impairment. Although not required by Rule G to submit to a blood test to prove his innocence, Claimant refused it when offered.

At the Investigation, Claimant produced his own negative test results from a sample submitted August 29, 1995. It is well settled in this industry, however, that a Carrier is not obligated to accept any test results over which it has no control. See Third Division Award 31787 and Awards cited therein.

Given the status of the evidentiary record and Claimant's prior disciplinary record, we do not find Carrier's action to be unreasonable, arbitrary or capricious. The claim is 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.