

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33169
Docket No. CL-31805
99-3-94-3-104

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Chicago & Illinois Midland Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11011) that:

1. Carrier violated the TCU Agreement, expressly Rules 26, 27, 32, 33 and any associated rules of the TCU Agreement, when it issued discipline to Mr. Mustered on February 26, 1993, following the formal investigation at Shops, Springfield, Illinois, on February 22, 1992, which was harsh, excessive, unwarranted, bordering on an abuse of discretion due to the facts and mitigating circumstances as brought out in the investigation.
2. Carrier shall now be required to reinstate to service Mr. Mustered with pay for all time lost, seniority, vacation and all other rights unimpaired including, but not limited to, health and welfare and recession of his dismissal assessed, effective February 26, 1993, with all reference and record of this investigation and hearing expurgated from Mr. Mustered's personal 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.

This is a dismissal case involving the Claimant's alleged violation of Carrier's Policy & Procedure on Drugs and Alcohol. The Claimant was subject to random testing as part of a "last chance" Agreement following a previous similar violation. In this test, the Claimant tested positive for benzodiazepines and marijuana metabolites.

The Carrier raises two procedural issues which the Board will address before turning to the merits. The first issue concerns whether the proper Organization representative appealed the dismissal. The second is whether the Statement of Claim as set forth in the Organization's Notice of Intent to the Board represents an amended claim. We determine, after reviewing the record, that the appeal was properly filed and that the Statement of Claim submitted to the Board has not been significantly altered so as to represent a changed claim. Thus, the Carrier's procedural arguments are rejected.

Turning to the merits, it is undisputed that the Claimant was employed as a Utility Man at the Havana Coal Transfer Plant in Havana, Illinois, that transfers coal from rail cars to barges.

The record indicates that the Claimant signed a waiver of Investigation on September 16, 1992, wherein he agreed to accept 90 demerits being placed against his discipline record and a 90 workday suspension, which was deferred during a three year probation period that included periodic tests for drugs and/or alcohol at least once a quarter during the probationary period.

On December 1, 1992, the Claimant was required to report to a local hospital for the collection of a urine specimen for the purposes of drug and/or alcohol testing. The testing was performed at Smith, Kline, Beecham Clinical Laboratories, which is a

National Institute of Drug Abuse approved laboratory. The results of that test were confirmed positive for benzodiazepines and marijuana metabolites.

On December 7, 1992, the Carrier advised the Claimant that he was medically disqualified from service and that within 45 days he must either be retested by a medical facility designated by the Carrier, or enter the Employee Assistance Program. The Claimant met with the EAP Counselor, but chose not to enter the in-patient treatment program and instead opted to be retested on January 7, 1993. The results of the lab test on the Claimant's urine proved negative for all substances. The Claimant was then approved for reinstatement and on January 14, 1993, he was required to take a return-to-work physical that included an additional drug screen. This drug test also proved to be negative.

The Claimant returned to work on January 20. Subsequently, January 25, 1993 was randomly selected for the Claimant's next drug and/or alcohol screen. The results of the urine specimen collected from the Claimant confirmed positive for benzodiazepines.

The Organization made a vigorous defense on behalf of the Claimant wherein it questioned the validity of the January 25, 1993 test results and its lack of quantitative numbers. The argument is innovative, but the problem is that neither the Claimant nor the Organization took exception to the prior test results of January 7 and 14, 1993, all of which were administered by the same laboratory. There is no persuasive evidence in this record to cause the Board to believe that this nationally approved laboratory erred in any of the tests given the Claimant.

The Board concludes that the Claimant was in violation of the Carrier's Policy and Procedure on Drugs and Alcohol. Accordingly, under this fact pattern there is no basis to set aside the dismissal.

AWARD

Claim denied.

Form 1
Page 4

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Docket No. CL-31805
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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 25th day of March 1999.