

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33652
Docket No. CL-34933
99-3-98-3-670

The Third Division consisted of the regular members and in addition Referee Robert G. Richter when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

- “(a) The Carrier acted in an arbitrary and capricious manner when it unjustly assessed discipline of dismissal on Clerk P. Tydd on October 10, 1994.
- (b) Claimant Tydd’s record be cleared of charges brought against her on September 16, 1994.
- (c) If Claimant sustained any loss by reason of the charges brought against her, she be compensated in accordance with the provisions of Rule 36(e).”

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 has 21 years of seniority as a Clerk. The Carrier offered the Claimant an opportunity to be promoted to Yardmaster. After training and qualification for such position, Claimant was required to take a physical exam on May 2, 1994 which was failed because of testing positive for drugs. Claimant was notified of this failure on May 8, 1994 and was given the opportunity to produce a negative drug sample within 45 days. On May 10, 1994 a negative sample was given and Claimant was returned to work by letter on May 13, 1994. In the May 13, 1994 letter Claimant was warned as follows:

"During the first three years following your return to work you will, from time to time, be required by me to report to our medical facility for further testing in order to demonstrate that you are no longer using cocaine, THC, or other prohibited drugs. Should a further test be positive or you fail to report for follow-up testing as directed, you may be subject to dismissal by your department for failure to follow proper instructions."

Claimant was qualified as an Extra Yardmaster on May 23, 1994.

On September 2, 1994 Claimant was given another drug test and failed. On September 9, 1994 Claimant was removed from service and was given a formal Investigation on September 27, 1994. On October 10, 1994 Claimant was dismissed from the service of the Carrier.

The Organization appealed the dismissal as being excessive.

On November of 1996 Carrier offered to reinstate the Claimant on a leniency basis provided she passed a drug-free physical on November 8, 1996. In the letter sent Claimant, which was the follow-up of a telephone conversation, the Carrier wrote:

"In the event that you do not report to the Ingalls Family Care Center on this date, the Carrier shall assume you have no interest in being reinstated."

Claimant failed to report to the doctor as scheduled.

The Carrier gave the Claimant an opportunity to return to work and the Claimant, by her actions, refused the opportunity. There is no basis to overturn the action of the Carrier.

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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 16th day of November 1999.