

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34206
Docket No. CL-35247
00-3-99-3-104

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12269) that:

- (a) Carrier acted in an arbitrary and capricious manner when it unjustly assessed discipline of dismissal on Clerk B. Eggebrecht on March 4, 1998.
- (b) Claimant Eggebrecht’s record be cleared of charges brought against her on October 21, 1997, and that she be reinstated to the service of the Carrier.
- (c) Claimant shall be compensated for all lost wages, 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.

On June 2, 1995, the Claimant, a clerical employee with the Carrier since November 7, 1968, tested positive for THC on a return from non-occupational disability examination. The Claimant entered EAP and was returned to service on July 20, 1995. The Claimant's return to service was conditioned as follows:

"During the first three years following your return to work you will, from time to time, be required . . . to report to our medical facility for further testing in order to demonstrate that you are no longer using THC, Cocaine, 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."

On a follow up test given on September 30, 1997, the Claimant tested positive for marijuana. Investigation and dismissal followed.

Substantial evidence supports the Carrier's determination that the Claimant violated the conditions of her return to service in 1995. The Claimant was not to test positive for prohibited drugs. However, the Claimant tested positive on a follow up test.

Nor do we find that dismissal was arbitrary. The Claimant was advised that should she test positive for drugs she "may be subject to dismissal." That is precisely what happened.

Invoking the saying "[t]he quality of mercy is not strain'd . . . ," and keying upon the return to work condition that if she tested positive the Claimant "may be subject to dismissal" [emphasis added], the Organization argues that dismissal was not required and that, given the Claimant's long service with the Carrier of almost 30 years, dismissal should not have been imposed. We disagree.

The Organization is seeking leniency from this Board. It has long been held that the Board does not have the authority to grant leniency — only the Carrier can do that. The standards that guide us in this case are that substantial evidence supports the Carrier's determination that the Claimant engaged in misconduct and the imposition of dismissal was not arbitrary. The Carrier has made those showings.

If anything, this case points out the scourge that drug usage has become in the American workplace. Here, an employee with almost 30 years of service succumbed to

drug usage and, after being given a chance to keep her job on condition that she refrain from using drugs, the Claimant again used drugs. As a result, the Claimant lost her job. Given the record before us and the standards which guide us, the Board has no choice. 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 23rd day of August, 2000.