

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35323
Docket No. MW-34273
01-3-97-3-852**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The dismissal of Section Foreman M. L. Balls for violation of Union Pacific Drug and Alcohol Policy and Union Pacific Operating Rule 1.6 was arbitrary, capricious, unwarranted, in violation of the Agreement and in violation of the Carrier’s Drug and Alcohol Policy (System File D-251/1030269).**
- 2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be ‘. . . paid for all time unjustly withheld from service, beginning on April 18, 1996, that no entry be made on his personal record, that all benefit provisions and wages lost should be allowed as if he had worked. This claim considered continuous until such time as he is reinstated.’”**

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.

The record indicates that the Claimant had accumulated approximately 16 years of seniority as a Trackman, Machine Operator, and Track Foreman. On July 18, 1995, the Claimant provided a urine sample in connection with the Claimant's return-to-work physical examination. The urine sample tested positive for illegal or unauthorized drugs. As a result, the Carrier disqualified the Claimant from service.

The Carrier subsequently entered into an agreement with the Claimant to enable the Claimant to return to service. As part of the arrangement to assist the Claimant to return to service, the Claimant agreed to comply with certain conditions that included a commitment to refrain from using illegal or unauthorized drugs in the future.

The Claimant subsequently took a drug test on April 9, 1996. The Carrier informed the Claimant of the positive results of the drug test and removed the Claimant from service. The Organization challenged the propriety of the Carrier's action.

A careful review of the record indicates that the Carrier afforded the Claimant a single opportunity to return to work after the positive results of the first drug test. The record omits any probative or credible evidence to challenge the validity of the positive test results of the second drug test that led the Carrier to remove the Claimant from service the second time. The record therefore proves that the Claimant failed to comply with a key provision for the Claimant's return to service after the positive results of the first drug test. No basis exists to reverse the Carrier's decision under the facts and circumstances of the instant matter. In particular, the record substantiates that the Carrier acted appropriately by removing the Claimant from service after the Carrier learned about the positive results of the second drug test. From a procedural standpoint, the Carrier also had a right to conclude that the Claimant's failure to comply with the conditions for the return to service after the positive results of the first drug test provided a sufficient basis for the Carrier to remove the Claimant from service after the positive results of the second drug test.

The record further reflects that an Investigation occurred after the removal of the Claimant from service after the positive results of the second drug test. During the Investigation the Claimant actually admitted that he had used cocaine on April 5, 1996. Under these circumstances the Carrier had a substantive basis to conclude that the Claimant had failed to comply with a key condition of the prior return to service,

namely, to refrain from using illegal drugs. Such a material violation of a critical provision of the agreement that furnished the basis for the Claimant to return to work constituted the requisite justification for the Carrier to remove the Claimant from service on or about April 18, 1996.

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 February, 2001.