

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35362
Docket No. SG-34995
01-3-98-3-756**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Seaboard Coast Line
(Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of R.W. Lang for reinstatement to service with his record cleared and with compensation for all time and benefits lost as a result of his dismissal following an investigation held on December 11, 1997, account Carrier violated the current Signalmen's Agreement, particularly Rule 47, when it did not provide the Claimant with a fair and impartial investigation and assessed harsh and excessive discipline against him without meting the burden of proving the charges. Carrier also violated Rule 47 when it did not provide notice of its decision in this matter within 20 days after the investigation. Carrier's File No. 15(98-11). General Chairman's File No. SCL/05/98. BRS File Case No. 10706-SCL."

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.

At all times relevant to this dispute the Claimant worked as a Maintenance Signal Foreman at Wildwood, Florida. On December 6, 1996, the Claimant underwent a short notice toxicological test and tested positive for cocaine metabolites. He was charged with violating Rule G of the CSX Operating Rules and a Hearing was scheduled for December 27, 1996. On December 20, 1996, the Claimant elected to participate in the Carrier's Rule G bypass program rather than attend a formal Hearing.

One of the conditions for his Rule G bypass program was that the Claimant consented to short notice toxicological testing. Such a test was scheduled for November 12, 1997, at 1:30 P.M. At around 8:40 A.M. on November 12, the Claimant contacted the Employee Assistance Program (EAP) Manager and requested that he be allowed to take the test later that day because he had a conflict at 1:30 P.M. The EAP Manager instructed him to report for the test no later than 3:00 P.M.

The Claimant did not report for his toxicological test on November 12, 1997, and did not notify anyone that he would be unable to take the test. On November 14, 1997, the Claimant contacted the EAP Manager and advised that he was unable to attend the test on November 12 because of a mechanical problem with his automobile.

On December 3, 1997, the Claimant was notified to attend a formal Investigation on December 11, 1997, to determine his alleged responsibility for failing to report for his short notice toxicological test on November 12, 1997. He was also charged with failing to protect his assignment on October 23 and 24, 1997. (He was actually absent on October 22 and 23, 1997.) On January 2, 1998, the Carrier advised the Claimant that both charges were sustained and that his employment was terminated immediately as a result.

There is no question that the January 2, 1998 notice of dismissal violated Rule 47(a) of the Signalmen's Agreement. Rule 47(a) requires the Carrier to furnish the employee a decision and a copy of the transcript of Investigation within 20 days after completion of the Investigation. The Carrier's decision was furnished 22 days after the completion of the Investigation.

The Board is of the opinion that the appropriate remedy for the Carrier's violation of Rule 47(a) is the remedy set forth in Third Division Award 26239. Therein the Board found that the Seaboard System Railroad's violation of Signalmen's Rule 47 did not entitle the employee to reinstatement to service. Rather, the employee was

entitled to compensation for the period of the Rule 47 violation. This is an appropriate remedy for the Carrier's violation of Rule 47(a) in the instant case. Therefore, the Claimant shall be compensated two days' pay for the Carrier's failure to comply with the time limits in Rule 47(a).

When the Claimant elected to participate in the Carrier's Rule G bypass program on December 20, 1996, he agreed to abide by the conditions imposed by the Carrier's EAP Counselors. One of these conditions was that he submit to short notice toxicological testing. Such a test was scheduled for November 12, 1997.

The Claimant was aware of the test scheduled for November 12, but failed to appear for it. On November 14, two days later, he contacted the EAP Manager and explained that he could not attend the test on November 12 due to mechanical problems with his automobile. The Board agrees with the Carrier that this explanation did not excuse the Claimant's failure to comply with the conditions imposed on him in December 1996 by his EAP Counselor. This was a serious transgression that warranted the Claimant's termination, notwithstanding his extensive service with the Carrier and its predecessors. His dismissal from service on January 2, 1998 was warranted.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of March, 2001.