

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35718
Docket No. CL-35578
01-3-99-3-527**

The Third Division consisted of the regular members and in addition Referee Donald W. Cohen when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12413) that:

- (a) Carrier acted in an arbitrary and capricious manner when it unjustly assessed discipline of dismissal on Clerk P. Johnson on June 17, 1998.**
- (b) Claimant Johnson record be cleared of charges brought against him on May 18, 1998.**
- (c) That if Claimant sustained any loss by reason of the charges brought against him, he 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.

On November 13, 1997, the Claimant tested positive for alcohol in violation of the Carrier's Drug and Alcohol Policy. This was his first positive test and he was referred to an outpatient treatment program, which he successfully completed on February 13, 1998. On March 18, 1998, the Claimant provided a breath and urine sample for alcohol and drug screening and these tested negative. As a result, he was returned to service on March 20, 1998 and informed that he must conform with the Carrier's policy on drug and alcohol abuse which clearly indicated that any further test confirmed as positive might subject him to dismissal for failure to comply with proper instructions.

On May 9, 1998, the Claimant underwent a follow-up drug and alcohol test. The samples the employee provided indicated the presence of alcohol in excess of the standard established by the Carrier, resulting in a positive test. As a result, his employment was terminated.

The Organization points out that the Claimant had an unblemished 41 year work record up to the time he was initially discovered to have alcohol in his system. The Organization points to the Investigation transcript which indicates the Claimant had his last drink no later than 10:00 P.M. the night before going to work. His scheduled start time was 7:00 A.M. The Organization presented a number of cases in which the decision to terminate was judged too harsh and employees were returned to work.

The Carrier argues that the Claimant was well aware of his responsibilities and that when he chose to report to work with alcohol in his system he assumed the risk of termination. The Carrier points out that its policy was well known to the Claimant. It indicates that there is no question regarding the validity of the test administered.

Any time an employee has worked for the Carrier for as long a period of time as the Claimant, during which he maintained a good record, there is a natural inclination to seek some method by which he may be returned to employment. The cases cited by the Organization support this concept. Notwithstanding, the Carrier had an established policy in place, of which the Claimant was well aware. It took only seven weeks from his reinstatement for the Claimant to again test positive. The Carrier was entitled to take this into consideration, as against the Claimant's past record, and it would not be appropriate for the Board to substitute its judgment for that 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 24th day of October, 2001.