

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37392  
Docket No. SG-38122  
05-3-03-3-520

The Third Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(Canadian National Railway (Grand Trunk District))

**STATEMENT OF CLAIM:**

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly CN/Grand Trunk Western):

Claim on behalf of J. M. Brasseur, for return to work and reimbursed for all lost time, account Carrier violated the current Signalmen's Agreement, particularly Rule 42, when it improperly dismissed the Claimant on December 17, 2002, based on a faulty alcohol test, account the person performing the test was unable to zero the testing device as required before administering the second or confirmation test under FRA regulations, specifically 49 CFR Subpart D 40.65. Carrier's File No. 8390-1-143. General Chairman's File No. 03-02-GTW. BRS File Case No. 12675-GTW.”

**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.

Assistant Signalman J. M. Brasseur twice failed a breath alcohol test on December 17, 2002. He was thereby in violation of his September 9, 2002 Leniency Reinstatement Agreement. The Carrier was within its rights to return the Claimant to dismissal status when he violated the terms of his Leniency Reinstatement Agreement. See Third Division Award 28361, as well as Public Law Board No. 6165, Awards 28 and 29.

**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 February 2005.