

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

STATEMENT OF CLAIM:

Claim on behalf of T. M. Griffin, to clear his personal record of any mention of this matter and to return him to his former position with his seniority, benefits and compensate him for all loss (sic) wages, account Carrier violated the current Signalmen's Agreement particularly Rule 68, when it failed to provide a fair and impartial investigation evident when Carrier issued disciplined (sic) of dismissal against the Claimant without first meeting the burden of proving its charge as a result of an investigation held on October 10, 2002. Carrier's File No. 1338778-D. General Chairman's File No. S-Investigation-343. BRS File Case No. 12749-UP."

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.

As a result of an Investigation held in absentia on October 10, 2002 the Carrier found that the Claimant violated Rule 1.6 when he falsified his reason for being absent from duty. On October 22, 2002 the Carrier dismissed the Claimant from its service.

The record shows that in late May and June the Claimant was absent from work telling his Supervisors that he had lung cancer and had to have treatment. On July 20, 2002 the Claimant again called his Supervisor two hours before the start of his shift stating that he would not be to work because he had to take lung cancer treatment. The Claimant was asked to provide medical evidence from his doctor verifying his condition. The Claimant failed to do so.

On September 16, 2002 the Claimant took a Company ordered physical examination and never mentioned anything about lung cancer. In fact he told the doctors the examination was because he was caught sleeping on the job.

It is clear that the Carrier proved its case that the Claimant was dishonest as to the reason for his absenteeism.

There is no basis to alter the action of the Carrier in this case.

AWARD

Claim denied.

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Award No. 37617
Docket No. SG-38054
05-3-03-3-445

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 22nd day of September 2005.