

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38962
Docket No. MS-38983
08-3-NRAB-00003-050470
(05-3-470)

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(David L. Miller
PARTIES TO DISPUTE: (
(CSX Transportation, Inc (former Louisville &
(Nashville Railroad)

STATEMENT OF CLAIM:

- "a) THE CARRIER FAILED TO AFFORD THE CLAIMANT A FAIR AND IMPARTIAL HEARING AS REQUIRED BY THE AGREEMENT.
- b) THE CARRIER VIOLATED THE 'TIME LIMITS' AS OUTLINED WITHIN THE RULES.
- c) THE CARRIER VIOLATED THE 'RULE 'G' BY-PASS AGREEMENT' BY NOT PROTECTING THE PRIVACY CONTAINED WITHIN RULE 'G'.
- d) THE CLAIMANT WAS REMOVED FROM SERVICE FOR INJURIES ON 04-14-03, HAD NOT RETURNED TO WORK, AND YET WAS CHARGED BY THE CARRIER ON MAY 25, 2004. THIS EXCEEDS THE TIME LIMITS THAT ARE OUTLINED WITHIN THE DISCIPLINE RULE.
- e) THE CARRIER HAD A TOTAL OF TEN (10) DAYS TO ACCESS DISCIPLINE FOLLOWING THE DATE OF THE HEARING (07-01-04) THE DISCIPLINE LETTER WAS ISSUED ON (07-30-04) AND POSTMARKED ON (08-02-04).

THIS WAS MORE THAN 20 DAYS OVER THE TIME LIMIT.

- f) THE CARRIER VIOLATED THE PRIVACY PART OF THE 'RULE G' AGREEMENT IN THAT THE EMPLOYEE, HIS SUPERVISOR AND THE FOREMAN WERE ALL IN THE ROOM THE MORNING OF 04-15-03 WHILE THE SUPERVISOR COERCED THE EMPLOYEE TO GIVE THE ANSWERS TO QUESTIONS THAT THE CARRIER WANTED ON HIS RECORD.

DUE TO ALL OF THE ABOVE, THE CARRIER SHOULD RETURN THE CLAIMANT TO THE CARRIER'S SERVICE IMMEDIATELY. THE CARRIER SHOULD ALSO PAY ALL BACK PAY INCLUDING OVERTIME THAT WAS AFFORDED TO OTHERS ON HIS GANG FROM THE DATE HE WAS REMOVED FROM SERVICE (04-14-03). ALL REFERENCE TO THIS INVESTIGATION SHOULD ALSO BE REMOVED FROM THE CLAIMANT'S FILE."

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 Claimant was dismissed for violating the Carrier's alcohol usage Rules and policy. The basic facts leading to the Claimant's dismissal are essentially undisputed. During the Investigation, he admitted consuming alcohol the night before taking a return-to-work physical examination that included testing for such usage.

Our review of the Investigation and subsequent record of handling does not reveal any procedural irregularities of significance. The various time limit contentions raised by the Claimant do not have a proper basis in the language of the applicable Agreement. The notice of charges did allow for more than five days notice before the Hearing. Rule 6, Section 7 does not impose a time limit for conducting the Investigation, nor does it impose any time limit for rendering the Carrier's decision. The Claimant apparently misread one paragraph of the Rule that applies to the conduct of a second Hearing before the next higher Carrier Officer if such a Hearing is requested in writing. The record does not establish that such an appeal Hearing was requested.

The privacy objections raised by the Claimant similarly lack merit. The Substance Abuse Treatment Plan document that the Claimant signed on May 6, 2004, before he consumed alcohol that night and which was also the day before his return-to-work physical, clearly provided that his failure to comply with the plan ". . . may require release of this document to supervision for purposes of disciplinary action." This same document also stated that it ". . . remains in effect even if furloughed or otherwise not in active duty service." Accordingly, the fact that the Claimant had not yet returned to service following surgical repair of a hernia does not undercut the operation of the document.

Turning to the merits, the record establishes that the Claimant began service on April 26, 2000. He was charged with a Rule G violation on July 24, but signed a Rule G Bypass Agreement on August 11, 2002 in which he agreed to comply with his after-care plan for five years after his return to service. He returned to service pursuant to the Agreement on October 28, 2002. He began surgical repair of a hernia condition in mid-April 2003 and remained out of service until May 2004. On May 6, 2004, he confirmed his treatment plan by signing the Substance Abuse Treatment Plan document referenced in the previous paragraph. This plan

required him to abstain from consuming alcohol. That same night he consumed alcohol. By his own admission at the Investigation, "I knew out in the barn I still had some stuff hidden and I didn't want to throw it away." When tested by Intoximeter the following morning at 9:54 A.M., he produced a screening result of .129. When tested again 15 minutes later, a result of .125 was obtained in confirmation.

After careful review of the evidentiary record, we find it to contain substantial evidence in support of the Carrier's determination that the Claimant engaged in the misconduct for which he was charged. Under the circumstances, we have no proper basis for disturbing the Carrier's disciplinary decision.

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 29th day of February 2008.