

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40659
Docket No. SG-40582
10-3-NRAB-00003-080136

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Pan Am Railways / Springfield Terminal

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Pan Am Railways:

Claim on behalf of R. D. Decker, for reinstatement to his former position with payment for all time lost and his benefits restored, account Carrier violated the current Signalmen’s Agreement, particularly Article 19, when it issued the harsh and excessive discipline of dismissal against the Claimant in connection with an investigation held on November 16, 2006. Carrier’s File No. S-07-01. General Chairman’s File No. WHK-232-022-1106. BRS File Case No. 13793-PanAm.”

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 7, 2006, the Carrier issued a Notice of Hearing to the Claimant which, in pertinent part, read:

“This Notice of Hearing is issued to develop the facts and place your responsibility, if any, in connection with the incident(s) outlined below:

Violation of Rule GR-G

For testing positive on a random drug test on October 04, 2006. The Carrier was notified on October 6, 2006. The specifics of the charge(s) and details of the test results will be reviewed at the investigation hearing.”

On November 22, 2006, following the Investigation, the Carrier wrote to the Claimant informing him that he had been found guilty of violating the Rule and that he had been assessed the discipline of dismissal. That dismissal has been appealed to the Board.

At the Investigation, the Carrier introduced testimony that the Claimant's position as a Signal Maintainer required him to be subject to random drug testing under regulations issued by the Federal Railroad Administration (FRA). A random drug test given on October 4, 2006, was positive for marijuana. Carrier witnesses outlined the drug-testing process describing the tests given, chain of custody procedures, and follow-up activities with the Claimant after the positive result had been obtained. The Organization did not challenge any of the Carrier's evidence. Accordingly, there can be no dispute that the Claimant violated Rule GR-G.

The only remaining issue before the Board is whether the Carrier's decision to dismiss the Claimant was appropriate. On the property, the Organization argued that permanent dismissal was excessive and the Carrier should have referred the Claimant to its Employee Assistance Program for rehabilitation. The Carrier countered, citing several Awards on its property, upholding dismissal for a first-time drug offense.

The Claimant, an employee with three years of service, did not attend the Investigation. Local Chairman Burke was present and represented the Claimant. Burke stated that he did not know why the Claimant was not present. He did not make any request for a postponement. Instead, Burke stated that the Claimant had furnished him with a written statement which the Claimant asked to be read at the Investigation. Burke did so.

In the statement, the Claimant admitted that he had smoked marijuana with some friends a few days before the random test had occurred. As far as he was concerned, however, "I didn't break or violate Rule G," because he was not on duty when he smoked the marijuana and was not under the influence at the time that he was tested. The Claimant further expressed the opinion that smoking marijuana was not a serious offense. As he put it:

"If I get caught by police smoking a joint I would get a \$75.00 fine plus a court charge. That's reasonable. Hopefully someday there will be a test that will determine the important fact of it all, was the employee under the influence while at work."

The position of the federal government and the Carrier, at least with respect to the use of marijuana by railroad employees in certain classifications, is not compatible with the views expressed by the Claimant in his statement. The random drug test taken by the Claimant arose from regulations established by the FRA. The regulations require employees performing work in highly sensitive safety positions in the railroad industry to be tested at random intervals to ensure safety to the public and employees of the railroad. One of the positions falling into the category of sensitive safety positions is that of Signal Maintainer, the position held by the Claimant. The Carrier's Rule G policy came into play after the random drug test showed a positive result. Neither the federal regulations nor the Carrier's Rule G policy require a finding that the employee be under the influence of the drug at the time of the test. The presence of the proscribed drug in the employee's system is sufficient to support a finding of violations of both the FRA regulations and the Carrier's Rule.

It is clear from the Claimant's forthright statement that he does not agree with the importance placed by the federal government and the Carrier on total abstinence

so as to preclude the possibility of such drugs affecting an employee's performance while on duty. There is nothing in the Claimant's statement, or in any evidence presented at the Investigation that would allow the Board to conclude that any change of his belief would result from his participation in the Carrier's Employee Assistance Program.

In light of all the circumstances presented here, which include the Claimant's statement, his failure to appear at the Investigation where he would have had the opportunity to explain his position in greater detail, and his relatively short period of employment with the Carrier, we cannot find any basis to conclude that the Carrier's decision to terminate the Claimant was arbitrary, excessive, or unreasonable. The claim will be denied.

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 1st day of November 2010.