

PUBLIC LAW BOARD NO. 3991

Parties
to the
Dispute

JOINT COUNCIL OF CARMEN, HELPERS,
COACH CLEANERS AND APPRENTICES

vs.

NATIONAL RAILROAD PASSENGER
CORPORATION

Case No. 26

STATEMENT OF CLAIM

The Organization seeks the reinstatement of Beech Grove, Indiana, Carman William B. Jackson, with compensation for time lost.

FINDINGS

On August 11, 1986, Beech Grove Maintenance Facility Carman William B. Jackson was charged with a violation of Rule F (sleeping on duty) and Rule G (being under the influence of a narcotic). Rule 23 (Discipline-Investigation-Appeal) of the parties' Agreement provides in pertinent part:

(a) Employees who have been in service more than 60 calendar days shall not be disciplined or dismissed without a fair and impartial investigation, unless such employees shall accept such dismissal or other discipline in writing and waive formal investigation. Such waiver must be made in the presence of a duly accredited representative of the organization.

Claimant volunteered to take a urinalysis test that he allegedly failed. He then elected to sign a waiver on August 15, 1986, in which, among other things, he admitted his guilt and agreed to adhere to an aftercare plan prescribed by an EAP Counselor.

By letter dated February 5, 1987, Carrier was notified that, as of that date, Claimant had attended only one aftercare session following his completion of a 30-day in-patient program for chemical dependence on September 26, 1986. Carrier thereupon issued Claimant a letter of termination for his failure to comply fully with the terms of the waiver.

In the course of processing its appeal, the Organization raised several questions about the appropriateness of Carrier's asking Claimant to take a urinalysis test and of his signing a waiver; and its failure to grant him a hearing, as well as to take into account his problem with Narcolepsy.

This Board can find nothing wrong with the waiver signed by Claimant. The parties' Agreement provides for such a procedure; Carrier complied with the Agreement when Claimant signed the document in the presence of a Union representative. Claimant thus knowingly admitted his guilt to the charges and waived his right to an investigation.

The Organization also questioned Carrier's decision to terminate Claimant without an investigation, upon learning of Claimant's alleged failure to adhere to the aftercare plan prescribed by his EAP Counselor.

Carrier responded by citing prior precedent on this matter in Award No. 12 of Public Law Board 3625 (Referee Sharp): "Once the agreement has been violated, it becomes self executing for its consequences. Dismissal is to be immediate."

This Board agrees with Carrier that once it has been established that the waiver has been violated, termination is automatic. The waiver specifically states that "I further understand that after successfully completing the initial treatment recommended by the EAP Counselor, I will be dismissed from service unless I comply with the following stipulations...." We also find some merit, however, in the suggestion that an evidentiary hearing be held to determine solely the question of whether a violation has taken place. If sufficient probative evidence is adduced at this investigation to support the allegation that an employe had not complied with the waiver, the Hearing Officer would have no recourse but to impose the discipline mandated. Conversely, if sufficient evidence is not provided, the terms of the waiver would remain in effect.

Given the fact that the waiver of a formal investigation is a bargained term and condition of the parties' Agreement, any modification of or addition to the current procedure should be negotiated by them. In the present case, we find sufficient basis in the record before us to convince us that Carrier had enough evidence in this particular instance to conclude that a violation had taken place. Although Claimant

alleged that he had some difficulty in meeting with the EAP Counselor, at no time did he refute the fact that he had only attended one after-care session at the CPC Valle Vista Hospital in a four-month period. Given Claimant's clear violation of the waiver, his termination must stand.

AWARD

Claim denied.

C.H. Gold

C. H. Gold, Neutral Member

J. Czuczman

J. Pissin

10-17-88

J. Czuczman, Employee Member

W. O. Cole

W. O. Cole, Carrier Member

October 17, 1988

Date of Approval