

SPECIAL BOARD OF ADJUSTMENT 1048

Award No. 121  
Case No. 121

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees  
  
and  
  
Norfolk Southern Railway Company

STATEMENT OF CLAIM:

1. The dismissal of Bridge Operator Donald A. Crist for his alleged violation of Rule G on October 23, 2001 was without just and sufficient cause, excessive and in violation of the Agreement (Carrier's File MW-DEAR-01-62-BB-429).
2. Bridge Operator Donald A. Crist shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

This Board, upon the whole record and all of the evidence, after hearing, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended;; and
2. That the Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction over the parties and the subject matter involved in this dispute.
3. This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

OPINION OF THE BOARD:

Rule G provides that:

An employee [who] reports for duty under the influence of alcohol or other intoxicant, cannabis in any form, an amphetamine, a

narcotic drug, a hallucinogenic drug, any controlled substance (as defined by federal law), or a derivative or combination of any of these, or who uses any of the foregoing while on duty, will be dismissed. Possession of any of the foregoing while on duty, or possession, use, or being under the influence of any [of the] foregoing while on Company property or occupying facilities provided by the Company, is prohibited.

The Claimant began his employment on October 24, 1978. The Claimant violated Rule G in 1989.

A careful review of the record indicates that the Claimant, while serving as a Bridge Operator under pay, twice tested positive on October 23, 2001 for alcohol. As a result, the Claimant violated Rule G. The record omits any credible evidence to challenge the reliability of the procedures for administering the alcohol tests.

The record indicates that the Claimant's prior violation of Rule G in 1989 precluded the Claimant from again receiving special consideration to avoid termination. In this regard the record substantiates that the Carrier permits special consideration only once during an employee's employment with the Carrier. As a result, the Carrier had just and sufficient cause to terminate the Claimant under the facts and circumstances of the present case. The Award shall so reflect.


AWARD:

After thoroughly reviewing and considering the transcript and the parties' presentations, the Board therefore finds that the Claim should be disposed of as follows:


The Claim is denied.



Robert L. Douglas  
Chairman and Neutral Member



D. D. Bartholomay  
Organization Member  
Dated: 10/28/02



D.L. Kerby  
Carrier Member