

SPECIAL BOARD OF ADJUSTMENT 1063

Case No. 262
Award No. 262

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

and

Norfolk Southern Railway Company
Norfolk and Western Railway Company, et al.

STATEMENT OF CLAIM:

Claim of Lake Division Engineer M. G. Verhoff for reinstatement to service and pay for all lost time after dismissal for his failure to comply with Rule G during an FRA mandated random breath alcohol test conducted at Bellevue on December 7, 1997.

OPINION OF BOARD:

This is a Rule "G" case. Claimant and his crew were randomly selected under FRA guidelines to participate in a breath alcohol test, when reporting for duty on December 7, 1997, for Train M79. The initial test registered .053 BAL and the confirmatory test indicated .049 BAL. As a result of these positive indications, Claimant was charged with a violation of Rule "G". Following a formal investigation, Claimant was dismissed from the service.

On appeal, the Organization asserted the Carrier did not comply with the contractual provisions requiring the Claimant to be notified within ten (10) days of the occurrence. They also insist the postponed hearing was beyond the time limits, therefore, the claim should be sustained as presented.

The Parties were unable to resolve the dispute on the property, so it has been progressed to this Board for decision. The Claimant was notified of the time, date and place of the hearing by the Organization and afforded an opportunity to appear in support of his claim.

Our review of the procedural arguments initially advanced by the Organization on appeal suggests they were waived when the Organization and Carrier mutually agreed to reschedule the investigation and Claimant was admittedly notified. As information only, we note there was a different address "5186 Windmere Drive" on the first certified notice, than that which appeared on the second certified notice "5188 Drivemore Road", both with the same town, state and zip code.

In any event, this was Claimant's first encounter with a Rule "G" violation, so we are not disposed to increase his financial burden by prolonging his dismissal. Claimant should be restored to service, with seniority unimpaired, but without compensation, with the understanding he pass the required physical examination for return to service employees.

FINDINGS:

The Agreement was violated.

AWARD:

Claim sustained to the extent provided in the Opinion.

ORDER:

The Carrier will place the Award into effect within thirty (30) days of the effective date.

Dated at Norfolk, Virginia, this 8th day of September, 1998.

W. F. Euker
W. F. Euker, Neutral Member

S. R. Weaver
S. R. Weaver, Carrier Member

P. T. Sorrow
P. T. Sorrow, Organization Member