

NATIONAL RAILROAD ADJUSTMENT BOARD

Form 1

FIRST DIVISION

Award No. 24262

Docket No. 43800

93-1-91-1-B-1886

The First Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: ( Brotherhood of Locomotive Engineers  
(  
( Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"The Organization asks that:

'The claimant be reinstated with seniority unimpaired and he be paid for all time lost in regard to this incident.'

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Claimant J. W. Sly was employed by Carrier as an engineer at Dilworth, Minnesota.

On August 12, 1989, the Claimant failed to report for work. The Carrier investigated the reason for Claimant's absence and it was discovered that the Claimant had been intoxicated on that date. Subsequently, the Carrier sent the Claimant a notice to appear for a formal investigation for allegedly violating Rule G. The Claimant contacted the Carrier and both parties agreed to a waiver of the investigation.

In the waiver, the Claimant admitted he was guilty of violating Rule G, agreed to his dismissal, and also to contact the Carrier's Employee Assistance Program (EAP). The parties agreed

that if the Claimant followed the guidelines set forth by the program, he would be considered for a conditional reinstatement.

On September 8, 1989, the EAP coordinator recommended conditional reinstatement of the Claimant after he passed a urinalysis test with the stipulation that he would be given two one-year probationary periods and he had to maintain total abstinence from alcohol and drugs.

The Claimant did not comply with the conditions set forth in the reinstatement agreement during his first probationary period. Therefore, he was placed on his second probationary with the condition that if he failed to comply this second time, he could be dismissed.

On January 11, 1990, the EAP coordinator contacted the Carrier informing it that the Claimant had called her while he was intoxicated, again failing to comply with the terms of his probation.

The Carrier held a formal Investigation and as a result, the Claimant was dismissed from service on February 27, 1990.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant did not comply with the requirements of the conditional reinstatement. The Claimant admitted during the Investigation that he was intoxicated when he spoke with the Carrier representative on November 7, 1989, and January 10, 1990. Those very facts make it clear that the Claimant failed to live up to the requirements of the conditional reinstatement.

Once this Board has determined that there is sufficient evidence in the record to support the guilty findings, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

In this case, the Claimant was given more than sufficient opportunity to reform his behavior. He failed to live up to the requirements of the conditional reinstatement. Consequently, the Carrier was justified in terminating his employment. Therefore, the claim will have to be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Attest: Catherine Loughrin  
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 8th day of November 1993.