

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

Appeal of dismissal from service of Electrician R. A. Downey on June 15, 1989 by the Consolidated Rail Corporation, Avon, Indiana.

FINDINGS:

The Second 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 employes 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, prior to June 15, 1989, had been employed as an electrician by the Carrier at Avon, Indiana. After an extended absence the Claimant received a return-to-duty medical examination on March 6, 1989. The examination included a drug screen, which was sent to Roche Biomedical Laboratories, Inc. for testing. The Carrier was notified that the urinalysis tested positive for cannabinoids, the use of which is prohibited under the Company Drug Policy. The Claimant was notified under date of March 14, 1989, as follows:

"A drug screen urinalysis conducted as part of your medical evaluation on March 6, 1989 was positive for Cannabinoids. The Company's medical policy forbids the active employment of persons who are dependent upon or use drugs which may impair sensory, mental or physical functions. Thus, I cannot qualify you for service at this time. You are disqualified pending further examination and an MD40 to this effect has been sent to your supervisor.

In accordance with Company policy, you are instructed to rid your system of Cannabinoids and other prohibited drugs and to provide a negative urine sample within 45 days of the date of this letter (April 28, 1989) at a Conrail fee for service medical facility of your choice. If you fail to comply with these instructions, you may be subject to dismissal.

I strongly recommend that you contact the Conrail Employee Counselor, who is:

James R. VanDerVort
Room 545, Conrail Building
31 E. Georgia St.
Indianapolis, IN 46204
(317) 267-4596

I also encourage you to seriously consider and follow the recommendations that the counselor may make on your behalf. Should you enter a counselor-approved educational or treatment program, the time period within which you must provide a negative urine sample can be extended to 45 days after you complete or leave the initial phase of the program, or 125 days from the date of this letter, whichever comes first.

Note: An extension of time to provide a negative urine sample is effective only where I have informed you of it in writing. Absent such written notification, the original time period for compliance with these instructions cannot be changed.

Should you have any questions regarding the test results, or any aspect of Conrail's policy with respect to use of drugs, please do not hesitate to contact me."

In the March 14, 1989 letter the Claimant was offered the opportunity to contact the Employee Counselor, who could recommend a sponsored treatment program. The Claimant elected not to enter a program.

The Claimant failed to produce a negative drug screen within the time limit set forth in the March 14 letter, i.e., by April 28, 1989. Under date of May 12, 1989, the Claimant was notified to attend a trial in connection with the following charge:

"Your failure to comply with the Conrail Drug Testing Policy as you were instructed in the letter dated March 14, 1989, from Medical Director O. Hawryluk, M.D., in that you did not, within 45 days of that letter provide a negative drug screen."

The trial was postponed by mutual agreement until June 8, 1989. Following the trial the Claimant was notified under date of June 15, 1989, that he was dismissed; having been found guilty of the charge.

The Employees argue that the Carrier violated Rule 6-A-3(a) because the hearing was not held within 30 days of March 14, 1989. Rule 6-A-3(a) reads in part, as follows:

"The trial shall be scheduled to begin within thirty (30) calendar days from the date the employee's General Foreman or equivalent officer had knowledge of the employee's involvement."

The issue of a time limit violation was not raised at the trial. The basis for discipline in this case was not the results of the March 6, 1989, examination but rather the Claimant's failure to comply with the instructions contained in the March 14, 1989 letter. The Claimant's failure to comply with the instructions did not become evident until midnight April 28, 1989. On May 8, 1989, the Medical Director notified the Avon Diesel Shop Manager of the Claimant's failure to comply with the March 14 instructions. By notice dated May 12, 1989 the Claimant was notified to attend a trial on May 18, 1989, subsequently postponed to June 8, 1989, by mutual agreement.

It is our conclusion that the 30-day period provided for in Rule 6-A-3(a) began in this case on May 8, 1989. The trial was scheduled for May 18, 1989, therefore, the Carrier fulfilled the requirements of Rule 6-A-3(a) and no violation of the Rule took place.

The Employees contend that certain documents (evidence) were not produced at the trial. Our review of the transcript of the trial indicates the documents were available to the Claimant and were made part of the trial record. There is no basis for the Employees' contention.

The Employees also argue that the Carrier used Claimant's prior discipline record as the main basis for disciplining him. It is a well-established principle that a Carrier may use an employee's past record in determining the amount of discipline to be assessed. We are not in a position to determine how much weight the Carrier gave Claimant's past record in this case, however, the Claimant in this case was found guilty of insubordination, a very serious matter; even more so when the insubordination is related to the use of drugs.

The Employees lastly argue that the Carrier failed to adequately support the charges. Our review of the trial indicates it was conducted in a fair and impartial manner. While the Claimant's representative raised several objections during the trial we do not consider the objections were well founded. At the trial the Claimant was given every opportunity to present evidence in his own behalf. He admitted to receiving the March 14, 1989 letter but gave no explanation or reason for not complying with the instructions contained therein.

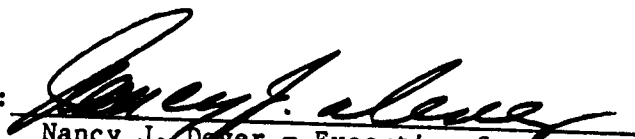
It is our conclusion that the Claimant was guilty as charged and that the Carrier's dismissal of the Claimant was justified and warranted.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1991.