

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

PARTIES TO DISPUTE: (Gebru Seyoum
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(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

I believe that I was wrongfully dismissed. I believe that the investigation was not conducted properly because all available information was not included and presented. I believe that company rules were not followed during this entire period. I believe that the terms of my reinstatement were not followed according to company guidelines. I request that I receive a complete exoneration and payment for my time loss.

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 were given due notice of hearing thereon.

The origin of the instant dispute lay in the alleged actions of the Claimant on October 7, 1987. On that date the Carrier alleged that Claimant was sleeping on duty and may have been under the influence of alcohol or other drugs. Claimant denied the allegation and refused the urine test. Subsequently, two separate Investigations were held concerning first the charge of sleeping on duty and second the alleged Rule "G" violation. Claimant was found guilty on both charges and dismissed from the service of the Carrier. After full progression on the property, the Carrier ultimately agreed to return the Claimant to service with numerous conditions including the completion of a physical examination with urinalysis. Claim is now at bar because the Claimant has refused the indicated physical examination and therefore has been dismissed from service.

A review of both Investigations convinces this Board that there was ample evidence to substantiate the Carrier's position. The Locomotive Foreman testified that he found the Claimant "hard asleep" at 3:45 A.M. in the cab of a locomotive. He shined a flashlight in his eyes, yelled his name twice, opened the door, yelled his name again and finally shook the Claimant's knee to

wake him. After ordering the Claimant back to work, the Foreman testified he again found the Claimant asleep in the same cab at 4:10 A.M. The Foreman further testified that at 5:55 A.M. he found the Claimant asleep for the third time. The Claimant denied the charge. The Board finds substantial probative evidence that the Claimant was sleeping on duty.

The events giving rise to the second Investigation followed at 6:05 A.M. when the Shop Superintendent was informed of the three incidents and felt that the influence of drugs or alcohol was the probable cause of the sleeping. The Shop Superintendent requested a urinalysis. Claimant was clearly informed that his refusal was considered a Rule G violation (Rule 565). Claimant admitted in the Investigation that he refused. The Board finds that the Claimant was admittedly guilty as charged.

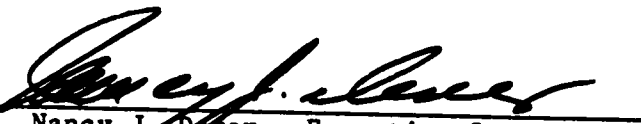
The Board is finally confronted with the fact that by date of May 2, 1988 the Carrier made an offer of reinstatement on a leniency basis which was signed by the General Chairman. A similar letter dated June 28, 1988 was signed by the Claimant under protest. It required the Claimant to pass a physical examination prior to return to service. Claimant refused the examination which included a urinalysis. The Claimant has argued Ex Parte and before this Board that he was innocent of the charges and subject to harassment and discrimination. The Board finds substantial proof to support the Carrier's position in the case at bar. It finds nothing in the record that was discriminatory. The Claim is denied.

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 24th day of July 1991.