

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12684
Docket No. 12736
94-2-93-2-94

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

(International Association of Machinists &
(Aerospace Workers
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Co.

STATEMENT OF CLAIM:

- "1. That the Chicago and North Western Transportation Company (hereinafter referred to as the "Carrier") violated the applicable provisions of Rule 35 of the July 1, 1921 Joint Agreement as specifically amended by Agreement dated July 1, 1979, when, subsequent to an investigation, the Carrier unjustly and improperly dismissed from service Marshalltown, Iowa Diesel Shop Machinist Jerry L. Clark (hereinafter referred to as the "Claimant").
2. That accordingly, the Carrier be ordered to:
 - (a) Restore Claimant to service with all seniority and vacation rights unimpaired.
 - (b) Compensate Claimant for all time lost from service commencing May 1, 1992.
 - (c) Make Claimant whole for all health and welfare and insurance benefits lost while dismissed from service.
 - (d) Expunge from Claimant's personal record any and all reference to the investigation proceedings and the discipline subsequently imposed."

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 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.

On April 16, 1992, Claimant was notified of an investigation, to be held April 24, 1992, concerning Claimant's failing to comply with instructions, conditions and company policy as outlined in two letters which Carrier sent to Claimant, in accordance with Carrier's Alcohol and Drug Policy. The investigation was held as scheduled, and on May 1, 1992, Claimant was dismissed.

The Organization contends that Claimant was denied a fair hearing. The Organization argues that Carrier's hearing officer's conduct of the hearing evidenced his bias and prejudgment against Claimant. The Organization also argues that Claimant's dismissal was improper, unwarranted, arbitrary and excessive, and violated a Letter of Understanding concerning physical examination.

Carrier contends that the hearing officer conducted the hearing in a fair and impartial manner. Carrier further argues that Claimant admitted that he failed to comply with the conditions of his return to service following treatment in Carrier's EAP and that such failure to comply is ground for dismissal, and that the Letter of Understanding does not apply to this case.

The Board has reviewed the transcript of the hearing. We find no evidence of hearing officer bias or prejudgment against Claimant.

Claimant entered Carrier's EAP for treatment for alcoholism. Under Carrier's drug and alcohol policy, Claimant's return to service was conditioned on his abstaining from alcohol consumption, attending support group meetings, documenting his attendance, and obtaining a support group sponsor. Claimant was advised of these conditions in a July 24, 1991, letter from Carrier's EAP Director. The letter further advised Claimant that failure to comply with the conditions during the next two years would subject him to dismissal.

On January 23, 1992, Carrier's EAP Director advised Claimant that he had not complied with the conditions of his return to service and gave him ten days to comply. At the hearing, Claimant admitted that he had continued to drink and had not attended the required support group meetings. Claimant also admitted that he did not document attendance at support group meetings and did not obtain a support group sponsor.

Claimant's dismissal was for failure to follow the EAP Director's instructions and did not involve a physical examination. Prior awards establish that employees returned to service pursuant to the EAP policy who fail to comply with the conditions of their return to service are subject to dismissal. See PLB No. 4544, Award 34; PLB No. 5035, Award 61. Claimant's failure to comply with the conditions of his return to service justified his dismissal.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

Catherine Loughrin

Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 6th day of April 1994.