

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim on behalf the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (SPTC-WL):

Claim on behalf of M. K. Griff, for reinstatement to service with all compensation and benefits restored beginning February 15, 1989, and continuing until this dispute is settled, account of carrier violated the current Signalmen's Agreement, as amended, particularly Rule 59(A)." Carrier file: SIG-LA-89-GRIFF. BRS file Case No. 7905-SPCT.WL.

FINDINGS:

The Third 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.

By letter dated July 8, 1987, the Claimant was dismissed from service for a Rule G violation, following an Investigation. Subsequently, the Carrier agreed to allow the Claimant to return to service on a "conditional basis." He was to be reinstated provided he could report to work within thirty (30) days and agreed to the following conditions:

- "1. You must totally abstain from alcohol and other drugs.
- 2a. You must participate in a rehabilitation program as agreed to with the Employe Assistance Counselor.

- b. You must attend two (2) AA meetings per week furnishing verification of attendance to Employee Assistance Counselor D. E. Walsh.
- c. You must contact Employee Assistance Counselor D. E. Walsh.
3. You will submit to random unannounced alcohol/drug tests.
4. You must receive clearance from the Medical Department after successfully completing a Company directed medical examination before you will be allowed to mark up for service.
5. You must refrain from failing to protect your assignment, and failure to report for duty must be substantiated and verified.

Any violation of the above will result in your RETURN TO DISMISSED STATUS. The stated conditions are in effect for a period of two years. If, at the end of the two (2) year period, there have been no violations of your conditional reinstatement your case will be reviewed for possible return to unconditional reinstatement status."

On February 10, 1989, while the Claimant was on a Medical Leave of absence, the Carrier directed him to submit to a urinalysis test. The test was positive for cocaine. As a result, the Carrier notified the Claimant by letter dated February 15, 1989, that he was being returned to dismissed status.

The Organization filed a claim on behalf of the Claimant. Its contention on the property was that the Claimant was denied a fair and impartial Hearing which was guaranteed by Rule 59(a). Furthermore, it asserted that the Carrier had no right to require the Claimant to take a urinalysis test while he was on a Medical Leave of Absence. Finally, it argues that the only documentation received by the Claimant or the Organization in support of the action was the letter returning the Claimant to dismissal status.

The Carrier urges denial of this Claim. The Claimant was afforded a full and fair Investigation at the time of his first discharge on a Rule G violation. It was at the discretion of the Carrier that he was returned to service provided he accept and comply with certain conditions, among which was total abstinence from alcohol and other drugs. He violated the conditions of his return to employment and was properly returned to dismissed status.

Rule 59 involves employees prior to dismissal, not to employees who were reinstated on a conditional basis and then violated those conditions.

The Board concurs with the Carrier in this case. Absent a showing that there was insufficient proof to support the fact an employee violated the conditions associated with his reinstatement, an employee is not entitled to an Investigation. There is sufficient valid evidence in this case to show that the Claimant violated a condition of reinstatement which required abstinence from alcohol and other drugs.

Another condition of the Claimant's reinstatement was the submission to unannounced urinalysis tests. The Carrier requested such a test when the Claimant was on a Medical Leave of Absence. Such a leave does not sever the employment relationship. The Carrier was within its rights to request such a test under the Conditional Reinstatement Agreement. Once it was determined the Claimant tested positive for drugs, the Carrier was within its rights to return the Claimant to dismissed status.

Since the Organization did not raise the issue of the Claimant's medication on the property there is no way to determine whether or not it had an impact on the urinalysis test. Since the argument was not raised on the property, it cannot be considered by this Board.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1991.