

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONAward No. 24366
Docket No. 43989
94-1-93-1-C-4603

The First Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
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(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

"The BLE-C&NW General Committee of Adjustment requests Engineer G. Merriweather, Chicago Terminal District, be reinstated to service of the C&NW Transportation Company with full seniority and vacation rights, compensation for all time lost, and discipline entry removed from claimant's service record.

Engineer Merriweather was dismissed from service following investigation of October 14, 1992 on the following charge:

'Your responsibility for your failure to comply with instructions in Mr. J. A. Sizemore, Director - Employee Assistance Program, letter dated June 30, 1992 in accordance with the Alcohol and Drug Policy of the Chicago and North Western Transportation Company.'"

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Carrier, through its Employee Assistance Program (EAP), provides a one-time opportunity for an employee to obtain assistance for drug and alcohol problems while maintaining his employment relationship with the Carrier. The EAP consists of three "tracks" depending on the manner of referral. "Supervisory Referral" allows the employee to reject the referral. The Claimant, was given no option to reject. "Co-Worker Report Referral" deals with an employee who violates Rule G, and after a report by a co-worker there is confirmation of the Rule G violation by a supervisor. No violation of Rule G occurred prior to the EAP's intervention in this case. The Carrier asserts that the Claimant was handled under the "Voluntary Referral" track of Item No. 3 of the Carrier's Alcohol and Drug Use Policy. However, it is difficult to characterize the actions of the Claimant in relationship to the Director of the EAP as "voluntary," especially since the Claimant was being held out of service after April 6, 1992 because the Carrier's Medical Department had not received a medical update regarding his depression and the treatment he was receiving for depression. Letters supplied by his psychologist and psychiatrist, received by the Carrier on May 11, 1992 and May 18, 1992, did not satisfy the Medical Department. And, the Medical Department, by letter dated May 20, 1992, sought "complete - medical records from all hospitalizations in the year 1990...." The Director of the EAP called the clinic where the Doctors were employed, because their letters were so general, and he testified that "... under questioning they admitted that the Claimant had indeed checked in for drug abuse treatment." The EAP Director did not have the Claimant's authorization to make this inquiry. The EAP Director confronted the Claimant with these facts and he testified that the Claimant admitted that he had received treatment recently for drug abuse. And, the EAP Director told the Claimant that the only way that he could be medically qualified to return to service would be the two year follow-up program of the EAP and the Medical Department.

The Claimant testified that he supplied the medical records requested by the May 20, 1992 letter, and these records were not alcohol or substance abuse treatment records; and that his hospitalizations in 1990 had to do with stress due to domestic reasons. He further testified that his treatment took place in 1990, and that he was hospitalized in 1992 only for pneumonia in February.

The expectation of the Voluntary Referral Program is that an evaluation will be made of the extent of the problem of the employee, and a leave of absence will be given an employee for a period of time necessary to complete treatment and establish control over his drug use problem. The EAP Director testified that the treatment took place "Presumably it was previous to ... these two letters by Dr. Perez and Green...." Thereafter, he testified that Claimant had received drug abuse treatment by the Doctors sometime during 1992. The record does not support a finding that Claimant received drug abuse treatment in 1992 as asserted by the EAP Director. Rather, it would indicate that treatment took place in 1990. And, it is asserted by the Organization that this hospitalization took place prior to the implementation of the Carrier's Drug and Alcohol Policy, which took effect in August of 1990.

Strictly limited to the unusual facts of this record, we are compelled to find that the handling of Claimant's case was not in accordance with the Carrier's own Voluntary Referral procedures of its Drug and Alcohol Policy.

The Claimant, of course, has major culpability in this case. After he failed one of the drug tests given under the June 30, 1992 instructions he admitted himself to the resident Alcohol & Drug Program at Loretto Hospital in Chicago and after completing a 20-day treatment program, he signed up for a six-month resident after-care program. We shall return Claimant to service with all rights unimpaired but without backpay. And, he must comply with all of the terms and conditions set by the EAP Director, as set forth in the Carrier's Voluntary Program. Due to Claimant's culpability relating to positive testing for cocaine and opiates in relation to the September 9, 1992 specimen, confidentiality is deemed waived, and certainly supervisors, who need to know, shall be informed of Claimant's problem.

AWARD

Claim sustained in accordance with the Findings.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 3rd day of October 1994.