

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONAward No. 24421
Docket No. 44093
95-1-93-1-U-1732

The First Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(
(Union Pacific Railroad Company (formerly
(Missouri Pacific Upper Lines)

STATEMENT OF CLAIM:

"Claim of Engineer B. M. Britt for lost time pay for the period beginning December 21, 1992, and ending on the day of his reinstatement to service in May, 1993."

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.

After a random drug test produced positive test results for marijuana on August 5, 1991, Claimant signed a waiver of Investigation, admitted a Rule G violation and elected to enter the Companion Program for rehabilitation. When Claimant attempted to return to service, Carrier's E. A. P. Manager disputed whether he had successfully completed the Companion Program and complied with all requirements of Carrier's medical experts. A protracted and extensive correspondence ensued between Carrier, the Organization, and Claimant's private attorney. Eventually, a conference was held between the Organization's General Chairman and Carrier's Director-Labor Relations on October 15, 1992, at which certain factual aspects of Claimant's treatment program and dependency-free status remained in controversy.

Subsequent to that conference, Claimant underwent examination by Bruce Harry, M.D., a noted forensic psychiatrist specializing in chemical dependency cases. Dr. Harry reported unequivocally on November 11, 1992: "Mr. Britt does not have either alcohol abuse or dependence, cannabis abuse or dependence, stimulant abuse or dependence, sedative abuse or dependence, or cocaine abuse or dependence." That report was provided to Carrier on December 9, 1992, and discussed extensively in another conference between the Organization and Carrier on December 21, 1992. Carrier provided no material countervailing evidence to support its continued withholding of Claimant from service, but the E. A. P. Manager refrained from approving his return to work until May 1993. There is no medical evidence of record justifying Carrier's refusal to permit Claimant's return to work in December 1992. Ample precedent supports a sustaining award in this case. See First Division Awards 17009, 20093, 22297, 22577; Third Division Awards 27116 and 28780; PLB No. 576, Award 38; PLB No. 2195, Award 33; PLB No. 2547, Award 5; PLB No. 2791, Award 10; PLB No. 4178 Awards 3 & 4; and SBA No. 894, Award 410.

AWARD

Claim sustained.

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 30th day of March 1995.