

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24988
Docket No. 44682
99-1-98-1-G-1704

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM:

“Claim that Carrier reinstate Claimant and for all monetary time lost in connection with being pulled-out-of-service on December 30, 1996 (including all monetary time lost for attending investigation on January 13 & 14, 1997) and for all monetary time lost from dates of investigation (January 13 & 14, 1997) until date of dismissal on January 29, 1997 and for all monetary time lost from date of dismissal (January 29, 1997) up-to-and-including date of reinstatement. This is to include the clearing of Claimant's personal record of any notation or mention of the discipline assessed in this case, all of which resulted due to Carriers improper and incorrect January 29, 1997 dismissal decision that Engineer J. E. Greyzck was culpable for the charges of said investigation. This claim is to also include restoration of seniority standing and all benefits the same as if Engineer Claimant Greyzck had incurred no break-in-service.”

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.

Claimant was dismissed from the service of the Carrier on January 29, 1997 as the result of an Investigation held on January 13 and 14, 1997. Carrier found that Claimant violated Rule G, which reads:

"Employees subject to call, reporting for, or on duty shall not use or be under the influence of narcotics, intoxicants, or any substance whatsoever, including those prescribed for them for medical reasons that will in any way adversely affect their alertness, coordination, reaction, response or ability to work properly or safely."

and the Carrier's General Notice which reads as follows:

"Safety is of the first importance in the discharge of duty. To enter or remain in the service of the Company is an assurance of willingness to obey the rules."

The facts in the case are that the Claimant was at the away-from-home terminal, Springfield, Ohio. Claimant was staying at the Carrier's lodging facility, the Ramada Inn, which is off Company property.

Claimant was called for an assignment, which was canceled. Claimant then tried to mark off sick, and was not allowed to do so. Claimant subsequently called the Crew Dispatchers to inform them that after falling in the bathroom and injuring a wrist to mark him off. Crew dispatching would not do so. Crew dispatching informed a Carrier Supervisor, who arranged to have the Claimant taken to the hospital by the relief van driver at the Springfield Yard Office. The Carrier's Terminal Manager got involved and gave the van driver a "battlefield promotion" to Assistant Terminal Trainmaster. The Terminal Manager told the van driver to tell the Claimant to take a DOT probable cause drug and alcohol test. There is no evidence that the Carrier's new Lieutenant had the slightest idea how to have such a test performed. Anyway, the Claimant said he was not going to take the test. After conferring with the Terminal Manager the van driver told the Claimant if he didn't take the test he would be held out of service for being insubordinate. Claimant refused again to take the test, and the Carrier's threat became a promise and Claimant was removed from service and returned to the home terminal.

However, you will note the Carrier did not charge the Claimant with insubordination, nor did the Claimant get charged with uncivil deportment with the Crew Dispatchers. Claimant was charged with violation of Rule G.

The Carrier has the burden to prove the Claimant guilty as charged. It has failed to do so in this case. First, the Organization has produced evidence that Claimant was not subject to DOT probable cause testing. Second the incident happened off Company property and while the Claimant was off duty. Third, the record is void of any evidence as to when the Claimant would be subject to duty. Finally, while the Carrier presented a written statement from the motel clerk that she smelled alcohol on the Claimant, the Carrier's newly anointed Assistant Terminal Trainmaster testified that he could not smell alcohol at any time. That includes time in the van and at the hospital.

Claimant at the time of the incident had 27 years of service. To dismiss an employee with such a length of service without proof of guilt is a miscarriage of industrial justice.

AWARD

Claim sustained.

ORDER

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 23rd day of March 1999.