

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25317
Docket No. 45090
02-1-01-1-I-1657

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

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(I & M Rail Link

STATEMENT OF CLAIM:

"Claim of Mr. Kevin Riniker for reinstatement to the service of I & M Rail Link (IMRL) with seniority unimpaired, restoration of all benefits (including vacation) with pay for all time lost following Carrier's dismissal of Claimant on May 5, 2000."

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 Kevin Riniker was a promoted Engineer who accepted a Management position with the Carrier as a Trainmaster. Due to poor performance as a Manager, he was required to submit to a drug screen on April 21, 2000. The drug screen confirmed that the Claimant used amphetamines. The Claimant was dismissed from his Management position, but was allowed to participate in the Carrier's Drug and Alcohol Rehabilitation and Education Program. If he successfully completed the program, he would be allowed to continue his employment as an Engineer. The Claimant agreed to waive his right to a Hearing and be bound by the provisions of a letter that specified the Claimant's obligation under the Carrier's Drug and Alcohol Rehabilitation policy. Under that policy, the Claimant was obligated to go to the Substance Abuse Service Center and be evaluated. The Center would then recommend a program. After a meeting between the Claimant and a substance abuse professional, it was concluded that no drug rehabilitation or education was needed by him. The Claimant notified the the Carrier Human Resources Director of that determination the next day.

The Carrier lodged a formal complaint about the Counselor's recommendation. After some discussion between the Carrier representatives and representatives of the Substance Abuse Center, the Claimant was directed to make himself available for further evaluation. The Claimant resisted submitting to re-evaluation and believed he had fulfilled the requirements of the waiver and should be returned to service. In July 2000, the Claimant was notified that he violated his waiver agreement by refusing to be properly evaluated for a drug treatment program. He would therefore remain dismissed.

A claim was filed protesting the Carrier's action of not allowing the Claimant to return to service as an Engineer. The claim was denied by the Carrier and has been placed before the Board for resolution.

The Board has reviewed the record and carefully studied all of the pertinent documents. As a result of that review, the Board has concluded that the case before it has standing and that the Claimant should be given another chance to become a worthwhile and productive employee. The Board therefore directs the following:

1. The Claimant's dismissal from service shall be set aside.
2. The Claimant is required to honor the terms of the waiver agreement he and his Union representative signed on May 5, 2000.
3. He will be required to submit to whatever program evaluation Human Resources demanded of him before.
4. When the Claimant returns to work, it will be with seniority intact, but without pay for lost time or benefits.

AWARD

Claim sustained in accordance with the Findings.

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 10th day of April, 2002.