

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

1. That the National Railroad Passenger Corporation erred and violated the contractual rights of Electrician Gerald Strachan when they removed him from service as a result of an investigation held on January 9, 1989 removal from service effective December 29, 1988.

2. That, therefore Mr. Gerald Strachan be compensated for all lost time at his current rate.

FINDINGS:

The Second 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.

This dispute involves the dismissal of Claimant for failure to comply with a Rule G Waiver. The Claimant signed said waiver on August 5, 1988. The Claimant was additionally charged by letter dated December 29, 1988, with violating stipulation No. 4 which stated that "For cases involving the use of drugs or alcohol, submit to and pass a test by urine or breath sample respectfully, each calendar quarter for a period of two years."

Claimant was sent to take a return-to-work physical on December 23, 1988. The results of the urine/drug screen detected a cocaine metabolite which was confirmed by gas chromatography-mass spectrometry. A formal Investigation set for January 4, was postponed to January 9, 1989, at the request of the Organization. Subsequent to the Investigation, the Claimant was found guilty and dismissed from the Carrier's service.

It is the position of the Organization that the Carrier failed to provide a fair and impartial Investigation in that the Hearing Officer failed to postpone the Investigation to allow the Claimant time to provide necessary

evidence. The Organization protested the lack of time to substantiate its defense. On the merits, the Organization points to the fact that the Claimant had just undergone dental surgery. It argued that the injection and other prescribed medicines invalidate the test, as Claimant was not guilty of the charges.

This Board has carefully reviewed these particular facts. We are very sensitive to the lack of a postponement. The Carrier operates at its peril when it sets a Hearing over the holidays and then grants only a short postponement. In these instant circumstances, we find no merit whatsoever to the procedural issue. The Organization protested due to the lack of time to get "records from the doctor or the dentist and in particular due to the dental 'tooth repair'" listed on the consent form. During the Investigation the Claimant did not know the dentist's name, phone number, location and could not remember how to drive there. The Hearing Officer adjourned the Investigation allowing fifteen (15) additional days to locate the dentist and provide the records. The documentation which the Organization argued might have "some bearing on the results of his test" was never forthcoming. The lack of a postponement was not arbitrary, did not result in the lack of witnesses, preparation, competent defense or in any manner deny a fair and impartial Investigation. As late as July 1989, the Claimant had never produced the information from his dentist.


The Carrier has fully met its burden of proof. The Claimant violated the Rule G Waiver. The drug screen was positive for cocaine, and the testimony about local anesthetics for tooth repair would indicate a positive test for opiates, not cocaine. There were two separate tests confirming a positive finding for cocaine. The Claimant signed the Rule "G" Waiver which stated "I will be dismissed from service unless I ... pass a test by urine..., each calendar quarter...." Claimant's positive drug test means he violated the conditions to which he agreed. Having violated the Agreement, dismissal is a self-executing consequence. In this record, the burden of proof has been met and dismissal is appropriate.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1991.