

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30903
Docket No. MW-31849
95-3-94-3-143

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation
(AMTRAK)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. D. Redding for alleged violation of National Railroad Passenger Corporation Rules of Conduct Rule 'G', in connection with a positive drug screen on March 1, 1993, was arbitrary, capricious, based on unproven charges and without just cause (System File NEC-BMWE-SD-3238D AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant Redding shall be reinstated to service, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third 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 waived right of appearance at hearing thereon.

Claimant tested positive for cocaine metabolites during a return-to-work physical examination on March 22, 1990. He did, at that time, have a choice. He could furnish a negative sample within a specified time period or enter a rehabilitation program.

He chose the former and furnished a negative sample. He was allowed to return to work, but as a condition of his return, he agreed in writing to be randomly tested and to keep his "system free of such substances."

On March 1, 1993, Claimant underwent another return-to-work physical, which included a test for drugs. Once again, he tested positive for cocaine metabolites. A Notice of Investigation was timely issued and following the Investigation, Claimant was dismissed from service.

The Organization challenges Carrier's decision to dismiss on various grounds, namely: (1) that Carrier failed in its burden of proof (2) the drug tests used were unreliable and (3) that Carrier failed to consider the "prescribed medication" Claimant was taking that could possibly have caused the positive test.

This Board examined the entire record, the transcript and on-property exchange of correspondence relative to this dispute and is of the opinion the Organization's attack on this discipline procedure is for naught.

Carrier was not able to consider the effects of the prescribed medication the physician used in swabbing Claimant's infected tonsil as Claimant himself could not provide the Carrier with even a clue as to identifying the medicine, other than to speculate that it was an antibiotic.

Regarding the burden of proof and unreliable drug test arguments, a review of the transcript and supporting documentation convinces this Board that these two arguments are without merit.

In 1990 Claimant was allowed to return to service under specific agreed to conditions. He failed to abide with the terms of the agreement he signed. The discipline of dismissal imposed by the Carrier will not be disturbed.

AWARD

Claim denied.

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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) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of June 1995.