

BEFORE PUBLIC LAW BOARD NO. 4568

BROTHERHOOD OF RAILROAD SIGNALMEN
and
NATIONAL RAIL PASSENGER CORPORATION
(AMTRAK)

Case No. 5

Dispute - Claim of the Brotherhood that:

The discipline of dismissal assessed Anthony E. Bailey for violation of Rules "D" and "L" of the National Railroad Passenger Corporation Rules of Conduct was unwarranted and that he should be reinstated to service.

Findings:

Claimant, Anthony E. Bailey was employed by Carrier as a Helper C & S position at the 30th Street Station, Philadelphia, PA. On February 9, 1988, Claimant was notified to appear for a trial in connection with the following charges:

"For violation of PERS19 and Rules of Conduct "D" and "L", specifically Claimant tested positive for cocaine on his February 2, 1988, quarterly drug and alcohol screen which he was subject to as a result of a positive test taken when he was recalled to service on July 27, 1987."

The trial was held on March 15, 1988, and as a result, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the extensive record in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to comply with the Employer's drug policy in February of 1988.


The record reveals that the Claimant tested positive for drugs in July of 1987, and then once again failed a quarterly drug screen administered on February 2, 1988. In the latter examination, he tested positive for cocaine.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary or capricious.

In this case, the record is clear that the Claimant showed up for work with illegal drugs in his system. The Carrier has a legitimate interest in protecting its other employees, its equipment, and the public by strictly prohibiting its employees from being involved with drugs in any fashion while in the work place. The Carrier had a legitimate basis for terminating the Claimant's employment, therefore, this Board will not set that action aside. The claim must be denied.

Award

Claim denied.



Neutral Member

Carrier Member

Organization Member

Date: _____

BEFORE PUBLIC LAW BOARD NO. 4568

BROTHERHOOD OF RAILROAD SIGNALMEN
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(AMTRAK)

Case No. 7

Dispute - Claim of the Brotherhood that:

Claim on behalf of M.T. Lowry, for reinstatement to service, with all lost pay and benefits restored, effective January 15, 1988, and continuing until this dispute is adjudicated, account of Carrier violated the current Signalmen's Agreement, as amended, particularly the Discipline Rule, when it dismissed him.

Findings:

Claimant, Michael T. Lowry, was employed by Carrier as a Communications and Signal Helper. Claimant was notified on December 7, 1987, to appear at a discipline hearing in connection with the following charges:

"Violation of Rule D, Company Policy and Procedures, which states in part '...employees must understand and obey Company and Department Policies, Procedures and Special instructions...'

Specifications

On December 3, 1987, while assigned as a Helper C&S at Amtrak, C&S Department, Berlin, NJ, you allegedly failed to comply with the provisions of Amtrak Policy and Procedures Pers 39 when you failed to provide a negative urine sample at 30th Street Dispensary as directed by your foreman.

Violation of Rule L, Company Policy and Procedures, which states, 'employees must obey instructions, directions and orders from Amtrak Supervisory Personnel and Officers except when confronted by a clear and immediate danger to themselves, property or the public. Insubordinate conduct will not be tolerated.'

The hearing was held on January 8, 1988, and as a result, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating several rules of conduct in connection with his failure to provide a negative urine sample as directed by his foreman for a quarterly drug screen.

The record reveals that the Claimant had occasion to submit to a physical examination in connection with his return to work and at that time he failed, due to the presence of marijuana in his system. He was then instructed to rid his system of marijuana and all other prohibited drugs and to either enter the EAP program or to provide a negative sample within 30 days. The Claimant chose to take the retest option and passed the subsequent drug screen. However, at that time, he agreed to submit to testing on a quarterly basis over the next two years. He also agreed that if he had a positive test result that he would be subject to dismissal.

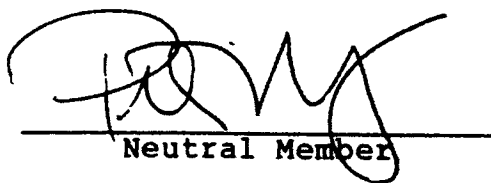
The record reveals that on December 3, 1987, the Claimant was required to submit to one of those quarterly drug screens and the Claimant left the Carrier's property and never complied with the direction. He was found guilty of failing to comply with the direction to take the second drug screen and he was subsequently terminated. There is no question that he failed to comply with the requirement of the Carrier.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary or capricious.

In numerous cases Boards have found that the Carrier has a legitimate goal to keep its work place drug free. In this case, it has set up a reasonable program to do that. The Claimant was given a second chance and did not comply with the instructions of the Carrier. Therefore, this Board must find that the Carrier had legitimate basis to terminate his employment. The claim must be denied.

Award

Claim denied.



Neutral Member

Carrier Member

Organization Member

Date: _____

BEFORE PUBLIC LAW BOARD NO. 4568

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(AMTRAK)

Case No. 4

Dispute - Claim of the Brotherhood that:

1. Carrier violated the current Signalmen's Agreement, as amended, particularly the Discipline Rule, when it dismissed Claimant, Michael Faison.
2. Carrier shall be required to reinstate Claimant, M. Faison, to service with all lost pay and benefits restored beginning November 8, 1988.

Findings:

On September 19, 1988, Claimant was apprised by Carrier the following:

"Violation of Rule 'G' when on September 8, 1988, you allegedly failed to pass an ALCO Breathalyzer test, administered during a return to work physical, thereby failing to comply with the stipulation contained in the Rule 'G' waiver you previously signed."

The investigation was held on October 24, 1988, and as a result Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the record and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to comply with all of the conditions of his Rule "G" waiver. Therefore, the claim must be denied.

The record is absolutely clear that the Claimant tested positive for a substantial amount of alcohol during his return to work physical on September 8, 1988. He was given two breathalyzer tests and he tested on

both occasions for a high degree of alcohol in his blood. There is further evidence that he smelled of alcohol, that his speech was slurred and his gait was unsteady when he appeared for the physical examination.

The record is also clear that the Claimant had previously signed a Rule "G" waiver in connection with a previous incident that occurred in June of 1988. At that time the Claimant agreed in the Rule "G" waiver to the condition that he would be dismissed if he did not pass a breathalyzer test during a two year probationary period. He did not pass, and he was terminated.

This Board will only set aside a Carrier's imposition of discipline if we find the action of the Carrier to have been unreasonable arbitrary or capricious. In this case, it is evident that the Carrier took the appropriate action. Therefore, the claim will be denied.

Award

Claim denied.



Neutral Member

Carrier Member

Organization Member

Date: _____