

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13116
Docket No. 12948
97-2-94-2-103

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Burlington Northern Railroad)

STATEMENT OF CLAIM:

“1. That in violation of the governing Agreement, Rule 4 in particular and Carrier Policy, Communications Towerman Alhan Burnham was deprived of overtime compensation to which he was entitled, due to Carriers actions, regarding him being informed of the results of a drug screen test.

2. That accordingly, the Burlington Northern Railroad Company should be ordered to compensate Communications Towerman Alhan Burnham for thirty-five point five (35.5) hours at the punitive rate of pay.”

FINDINGS:

The Second 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.

This case turns on credibility. Whose version of the incident is to be credited. Claimant was involved in a vehicle accident on June 3, 1993. He was required to submit a urine test on that date and was withheld from service pending results of the test. On Friday, June 4, 1993 Claimant's crew was assigned to repair tornado damage to communications facilities in the St. Louis area. His crew worked 35.5 hours overtime that weekend.

Claimant's Foreman says that he learned that the drug screen was normal at approximately 3:30 P.M., on Friday, and notified Claimant of the results, that his Crew was en route to St. Louis for emergency work and that he could join them if he wished to do so. The Foreman says that Claimant responded that he had plans to drive to his home that weekend, and that he was scheduled to begin his vacation on Monday, June 7. The Foreman says that Claimant says that he would work the weekend if needed, but would rather not do so.

Claimant says that he was not informed until Monday, June 7 that his screen was negative, that he would have worked the overtime if he had not been held out of service.

If Claimant's version is credited, the claim is payable because applicable rules require that when test results are negative, "the employee will be returned to service and paid for time lost." If the Foreman's version is credited, the claim is not payable because Claimant declined to work the overtime.

After complete and thorough search of the record the Board has no basis to believe or disbelieve either the Foreman's version of the events or Claimant's version. Both versions are unsubstantiated with any additional evidence or testimony of any type. In other words it is a draw. Either version could be the correct one, or either version could be the incorrect one. This means, then, that Claimant's version must be rejected. It is rejected, not because it may not be truthful, but because it is not supported by a preponderance of the evidence. Claimant, as petitioner, has the burden of proof in this matter. He must prove the essential elements of his claim with a preponderance of the evidence. In a tie, i.e., when the evidence is on balance, the party with the obligation to support its contentions with a preponderance of the evidence loses.

Accordingly, the claim will be denied because Claimant did not establish to the satisfaction of the Board that his version of the time that he was notified of his negative drug screen was correct, and the Foreman's versions was incorrect.

AWARD

Claim denied.

ORDER

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 Second Division

Dated at Chicago, Illinois, this 6th day of May 1997.