

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13489
Docket No. 13376
00-2-98-2-51**

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

**(Sheet Metal Workers International Association
PARTIES TO DISPUTE: (
(The National Railroad Passenger Corporation**

STATEMENT OF CLAIM:

- “1. It is the claim of the Sheet Metal Workers’ Association that the Carrier violated the current controlling Agreement when it unjustly dismissed Sheetmetal Worker B. J. Rowell from service by letter dated June 2, 1997 as a result of a formal investigation held in the Carrier’s facility on May 22, 1997 in Hialeah, Florida.**
- 2. That the Carrier be required to return Sheetmetal Worker Rowell to service with seniority rights unimpaired.”**

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.

A review of the record shows that on August 17, 1996 the Claimant was asked to take a drug and alcohol test for probable cause after he had driven a dump truck he had been operating into the side of an Amfleet Car. The Claimant tested positive for alcohol,

marijuana and cocaine. In lieu of an Investigation the Claimant entered the Carrier's EAP program. Thereafter, on October 1, 1996 the Claimant signed a Rule G Waiver and was reinstated to service. A condition of this Waiver was that the Claimant would remain drug and alcohol free while in the employment of the Carrier. Pertinent provisions of the Waiver the Claimant signed state the following:

"I must submit to and pass an unannounced drug and/or alcohol test by urine and/or breath sample at least four times a year for the first two years of active service following my return to duty"

On March 16, 1997 the Claimant was scheduled for a drug/alcohol test in accordance with his October 1, 1996 Waiver. The Claimant refused to take the test albeit he was warned by supervision that refusal to do so was a violation of his Waiver. The Claimant persisted in his refusal. Thereafter, on March 17, 1997 the Claimant was advised that he was being held out of service.

On this same day the Claimant was sent a Notice of Investigation to determine facts and place responsibility, if any, in connection with his ". . . alleged violation of the Amtrak Alcohol and Drug Waiver Agreement signed by (him) on October 1, 1996 . . ." and with violation of Amtrak's Standards of Excellence as this pertains to drugs and alcohol.

An Investigation was held on May 22, 1997. Thereafter, on June 2, 1997 the Claimant was advised that he had been found in violation of Amtrak policy as charged and he was dismissed from service. This discipline was appealed by the Organization in the proper manner up to and including the highest Carrier officer designated to hear such. Absent settlement of the claim on property this case was docketed before the Second Division of the National Railroad Adjustment Board for final adjudication.

Upon review of the record the Board must conclude that the Claimant was in violation of the Waiver he signed and of the Carrier's policy which states that refusal to submit to a test or failure to cooperate in testing procedures or to comply with a Waiver subjects an employee to dismissal. As a matter of evidence there is no basis for sustaining the instant claim. The Waiver the Claimant signed is self-activating. Although the Claimant states, in effect, at the Investigation that he did not fully appreciate the gravity of his condition such in itself is insufficient explanation for his willful and premeditated refusal of a drug/alcohol screen which was a requirement of the

Waiver he signed. Nor does the record support the conclusion that the Claimant did not understand the conditions of the Waiver he signed in October of 1996.

Arbitral precedent in this industry establishes that discharge is not inappropriate discipline for an employee who refuses to take a drug test (Public Law Board 4788, Award 76; Public Law Board 4236, Award 27). Given the full record in this case the Board cannot reasonably conclude that there are sufficient grounds for it to diverge from this precedent. The claim is denied.

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 11th day of April, 2000.