

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(The Kansas City Southern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) Laborer H. Douglas shall be returned to his position as laborer and he shall be compensated for all compensation loss suffered by him as a result of being improperly withheld from service beginning July 29, 1985 (Carrier's File 013.31-338)."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees 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.

In July, 1985, Claimant, who had been furloughed on February 15, 1985, reported for a physical examination required of all returning employees who had been out of service for more than ninety days. The examination includes a drug screen. On July 11, 1985, Claimant tested positive for marijuana. Although the Organization denies Claimant was told the cause for his failure of the test we note the claiming letter of September 14, 1985, stated:

"After this screen had been performed, Mr. Douglas was contacted and told that there was Marijuana in his sample."

A second test performed July 19, 1985, revealed the presence of Ethanol (Alcohol) and so did a third test on July 26; a fourth test on August 12 proved positive for marijuana as did a fifth test on November 19, 1985. On September 23, 1986, Claimant was given a sixth test. It was negative and he subsequently returned to work.

On July 27 and November 20, 1985, Claimant underwent a drug screen through his personal physician. Both were negative for marijuana but no test for alcohol was made.

The Organization submitted numerous articles from scholarly Journals and other authoritative sources as well as depositions from experts dealing with error rates and probabilities in drug screening, possibilities of lack of care in the chain of custody of samples and related problems presented by drug screens. However these materials were not presented, nor were these arguments raised, on the property except to the extent that the results of the tests arranged through the private physician could be viewed as a challenge to Carrier's tests. It is noted, however, the private screens were restricted to testing for marijuana whereas Carrier's July, 1985, tests revealed the presence of Ethanol.

In addition to its arguments about error rates and specimen control the Organization contends documented results of Carrier's tests were not produced on the property and asserts there is no evidence the tests are "capable of correlating physiological and/or psychological effects of marijuana with levels of urinary metabolites reported." Again, these arguments are raised for the first time before this Board. As was stated in Third Division Award 27081:

"This Division has reviewed the entire record of this case, including all relevant documents exchanged on the property, and finds that the Organization's questioning of the validity of the testing procedures did not, for the most part, arise until the Organization presented its Submission to this Division It is a well accepted precept within the railroad industry that matters not addressed during the on-property development of a claim are not admissible before the National Railroad Adjustment Board. We so hold here."

This language describes, and is dispositive of, this case.

A W A R D

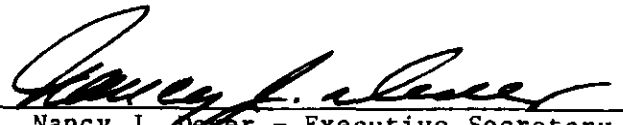
Claim denied.

Form 1
Page 3

Award No. 28117
Docket No. MW-27667
89-3-87-3-123

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 25, 1989.