

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28742
Docket No. MW-28034
91-3-87-3-601

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.
(former Western Maryland Railway Company)

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

(1) Track Department employee T. E. Beard shall be compensated for all wage loss suffered as a consequence of being improperly withheld from service in connection with a return to duty physical examination [System File 12-2(86-350) L7.11/049]."

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 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.

The Claimant, a track employee, was furloughed on August 26, 1985. In March, 1986, he was recalled to service and in connection therewith was directed to submit to a urinalysis for drug screen purposes. On March 17, 1986, the Carrier's Chief Medical Officer wrote the following letter:

"I have recently received the results of your medical examination performed by Dr. B. Beaven on March 5, 1986. I regret to inform you that I am unable to find you medically qualified to return to duty due to the finding of cannabinoids (metabolites of marijuana) in your urine on this examination. This is because the presence of such substances in your body may jeopardize your safety and the safety of others.

Before I can give consideration to permitting you to return to duty, it will be necessary that you either:

- (1) contact Mr. R. C. Coughlin of Chessie's Employee Assistance Program at (301) 237-2828. Mr. Coughlin will conduct an evaluation and report directly to me regarding the assessment of the state of your chemical dependency, and whether or not treatment is in order. Please contact Mr. Coughlin as soon as possible so as to expedite consideration of your ability to return to duty. Upon review of this initial evaluation, I shall decide whether to have you re-examined for consideration of return to duty or referred for additional treatment through the auspices of the Employee Assistance Program before consideration is given to your returning to duty.

OR

- (2) undergo another urine test for drugs with one of our Railway Medical Examiners within ten (10) days of receipt of this letter. If you elect to undergo this urine test, please call (301) 237-3448/3446 so that a member of my staff can make arrangements for the test.

You must complete one of the two procedures described above before your ability to return to duty will be reconsidered."

The Claimant submitted to another test which the Carrier claimed was positive for marijuana and cocaine. A short time later, the instant Claim was filed.

The Organization, generally speaking, views this case not as a medical matter but as a discipline matter. They contend that the Carrier has the burden, which they have not met, of proving that the Claimant submitted to a drug screening test which was reported positive for cannabinoids and/or cocaine. Additionally, they argue that the Carrier has not shown that its decision to withhold the Claimant from duty was based upon a reasonable medical standard.

The Carrier argues they have the prerogative to establish reasonable medical standards and the right to withhold from service employees returning from furloughs who don't meet them. They contend that this is not a discipline case. As a medical case, they view their standards as reasonable and submit that there is no evidence that the Claimant has met them.

The Board, as does the Carrier views this as a medical case. This is not a discipline case since the employee's employment relationship with the Carrier has not been permanently severed. The employee was medically disqualified and the Carrier's Chief Medical Officer essentially indicated in March that when the Claimant's medical condition disappeared he would be returned to service. He had two options--to have another test or submit himself to chemical dependency assessment and treatment. The later of these two avenues remained open after July.

The Board views this case as analogous to other medical situations. For instance, if the Claimant's physical exam had revealed unusually and unacceptable levels of blood sugar or high blood pressure, the Carrier would have been within its rights to withhold the Claimant from service. The ball would then have been in the Claimant's court, just as the Carrier invited him to do in this case, to have the condition treated or to have another test. Beyond this, if the Claimant disagreed with the Carrier's testing procedures and results, he could have simply put them in dispute by having a valid test performed on his own. He might have also taken issue with the medical standards themselves.

In the instant case, the Claimant did not seek at any time to place the Carrier's procedures in dispute by obtaining a contrary medical finding. Moreover, he did not seek treatment or submit to another Carrier supervised test until July. Since that time, he has neither sought treatment or sought an independent medical evaluation disputing the Carrier's findings. As for the reasonableness of the Claimant's standards, it is the opinion of the Board in the context of the Claimant's employment that the physical condition of testing positive for illicit drugs raised the same kind of reasonable concern for the ability of the Claimant to work safely on the railroad and without posing an undue liability as would other medical conditions.

Accordingly, the Carrier did not violate the Agreement. The Claimant's employment relationship was not severed and employment remained available to him so long as he could demonstrate with competent medical evidence that his condition did not exist in the first instance or was treated. In this regard, the Carrier is obligated to extend to the Claimant the same rights and privileges that are retained by any employee who had been medically disqualified.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1991.