

The Third Division consisted of the regular members and in addition Referee Thomas J. DiLauro when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.
(The Chesapeake and Ohio Railway Company)

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

(1) The withholding of Mr. M. A. Wagner from service for alleged medical disqualification, beginning July 23, 1990, was improper and in violation of the Agreement [System File C-TC-7099/12(90-1023) CON].

(2) The Claimant shall be restored to service with seniority and all other rights unimpaired, he shall be compensated at his pro rata rate of pay for all wage loss suffered beginning July 23, 1990 and continuing until he is returned to service."

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 employes involved in this dispute are respectively carrier and employes 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.

Upon his recall to Carrier's service from furlough, the Claimant underwent a physical examination, which included giving a urine specimen. His urine specimen was rejected by the laboratory. On July 31, 1990, the Claimant presented the Carrier's physician with another urine specimen.

On August 15, 1990, the Claimant received a letter, dated August 7, 1990, from the Carrier's Associate Chief Medical Officer informing the Claimant that his failure to contact that Officer would result in his being found medically unqualified for service. The Claimant received a second letter, dated August 14, 1990, from the Carrier's Associate Chief Medical Officer, informing him that he was medically unqualified for service due to the finding of cannabinoids (metabolites of marijuana) in his urine. The Claimant was instructed to contact a counselor in the Carrier's Employee Assistance Program. The Claimant protested that he had not used any illicit drug.

The August 1, 1988 Implementing Agreement, applicable here, contains provisions reading:

"11. (a) Any employee tested under the provisions of this agreement and found to be positive for drugs and/or alcohol in accordance with Section 4(a) and Section 7 hereof, except as provided in Subsection 4(b), will be medically disqualified by the CSXT's Chief Medical Officer in writing, and will be required to participate in the Employee Assistance Program (EAP) for evaluation and successfully complete the prescribed treatment program prior to being returned to service. An employee's return to service will also be predicated upon the passing of a re-examination by the Medical Department, which will include alcohol and/or drug screens. (This procedure is explained in Appendix B)."

Step 5 of Appendix B of the parties' Agreement reads:

"Step 5 Employee is evaluated by the Employee Assistance Program counselor, and the results of this evaluation are sent to the Chief Medical Officer. If found to be non-dependent, the Medical Department will schedule the physical examination after receiving the proper documentation from the counselor. Should the employee be in need of treatment, the counselor will develop a Treatment Plan for the employee and forward a copy to the Chief Medical Officer for placement in the employee's medical record."

Although the Claimant reported to the Carrier's EAP counselor, the record contains no evidence that the Claimant received an evaluation by a Carrier's Employee Assistance Program counselor or that the Claimant was found to be dependent.

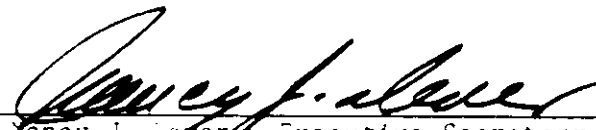
Based on the record before us, the Board concludes that the Claimant should be returned to service with seniority and all other rights unimpaired, but without any pay for time lost while out of service, provided that, within thirty days of the Order date of this Award he satisfactorily passes an examination by the Carrier's physicians as prescribed in the August 1, 1988 Agreement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1992.