

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32144
Docket No. MS-32102
97-3-94-3-504

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

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PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

- "1. The Carrier acted against Rule #24 of the, National Railroad Agreement was violated resisted my mortal rights, on July 27, 1992 in Chicago, Illinois.
2. The Carrier shall now be required to immediately reinstate me to service with seniority rights unimpaired and compensate my amount equal to what I would have earned, including but not limited to daily wages, overtime and holiday pay had discipline not been assessed.
3. The company should settle all of my Medical Expense, past and present.
4. Then Carrier now should expunge my charges of discipline from my personal files and records.
5. The Carrier is responsible for dilemma."

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 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.

The record evidence reveals that on December 11, 1991, Claimant tested positive for drugs, specifically marijuana. Medical records from South Chicago Community Hospital reflect that Claimant commenced attending Group Therapy on January 10, 1992. On January 29, 1992, Claimant signed a conditional return-to-work agreement wherein, among other understandings reached, Claimant obligated herself to keep her system free of prohibited drugs and acknowledged that another positive test would result in her dismissal from Carrier's service. By signing this conditional return-to-work agreement, Claimant also assented to submit to quarterly drug/alcohol testing for a two-year period. This conditional return-to-work agreement functioned as a Rule G waiver and Claimant was permitted to return to service of the Carrier in her position as a Reservation Sales Agent in Chicago.

In accordance with the drug testing provision of the January 29, 1992 conditional return-to-work agreement, Claimant underwent one of the quarterly drug tests on May 26, 1992 which results proved positive for marijuana. As a result, Claimant was removed from service of the Carrier. According to the record evidence, an Investigation was scheduled to commence the morning of June 22, 1992 but Claimant avers that while she was present along with her Union Representative for the Investigation, it was postponed by agreement until such time she achieved recovery in the Employee Assistance Program she was referred to attend by the Employee Assistance Counselor. However, other record evidence purports that postponements of the Investigation were granted on June 8 and again on June 22, 1992, due to Claimant's failure to appear at these two scheduled Investigations. Claimant asserts she was enrolled in a rehabilitation treatment program at the South Chicago Hospital Chemical Outpatient Clinic to commence on June 26, 1992, but was barred from participating in the program due to unpaid medical bills for the period August 1991 through January 1992. Subsequent to being barred a second time from entering the rehabilitation program, Travelers Insurance Company sent South Chicago Clinic certification concerning past "unpaid"

medical statements and Claimant was permitted entrance into the program on July 11, 1992 and attended said program until September 17, 1992. In this interim period, however, according to the record evidence, a third notification was issued by Carrier to Claimant that an Investigation would be conducted on July 20, 1992, but said notification, sent by Certified Mail, went unacknowledged by Claimant. Neither the Charging Officer, nor the Union Representative, nor Claimant's EAP Counselor heard from Claimant, and their respective attempts to reach Claimant by telephone were also unsuccessful. As a result, an Investigation proceeded on July 20, 1992 with Claimant in absentia. Among other testimony adduced at this Investigation, a Carrier nurse attested she subjected Claimant's urine specimen taken on May 26, 1992 to the EMIT drug screen twice and each time the test proved positive for marijuana. The nurse testified she then sent Claimant's urine specimen with seal, identification, and chain-of-custody intact, to NIDA-Certified Smith/Kline-Beecham Laboratories and that this Lab confirmed, through GC/MS testing of the specimen, the positive finding of marijuana. As a result, Carrier, consistent with the conditions specified in the January 29, 1992 conditional return-to-work agreement, dismissed Claimant from its service on grounds that failing a quarterly drug test caused her to be in violation of Rule G pertaining to Alcohol and Drugs and Rule L pertaining to obeying instructions. Claimant's dismissal from Carrier's service was effective as of July 27, 1992.

The record evidence reflects that the Organization progressed appeals of Carrier's dismissal action of Claimant to all levels of the grievance procedure short of arbitration and that Carrier denied the claim at each level. By letter dated May 26, 1993, the General Chairman advised Claimant he had notified Carrier the Organization would be progressing her case to arbitration before a neutral Referee who would render a final and binding decision. Initially, Claimant's case was scheduled to be heard by Special Board of Adjustment No. 1070 on May 10, 1994 but Carrier requested a postponement due to a scheduling conflict. Claimant's case was subsequently rescheduled to be heard by SBA No. 1070 as Case 1 on Thursday, May 26, 1994.

In Case 1, Award 3 of SBA No. 1070, the Referee denied Claimant's claim finding that, although tried in absentia, she had received a fair and impartial Hearing on July 20, 1992 as she had been notified of the Hearing, but had not responded to that notification or to the notifications of prior Hearings scheduled on June 8 and June 22, 1992, but postponed due to her absence and, as Carrier had presented substantive evidence, she was guilty as charged. The denial ruling of Claimant's claim was rendered August 12, 1994. By letter dated September 29, 1994, Claimant notified NRAB of her

intent to file with the NRAB an Ex Parte Submission relative to her case. Claimant filed said Ex Parte Submission with the Board dated December 10, 1994, a date that fell within the 75-day time frame for filing such Submission. Subsequently, Claimant's case was docketed and heard by the Third Division on Friday, June 13, 1997. Claimant presented herself before the Division at a Referee Hearing and advocated her own position.

At the outset, we find Claimant's vigorous advocacy of her case to be admirable and only surpassed by her positive outlook on life regardless, as she noted, of the outcome of what our Board decides. Claimant has obviously conquered her drug addiction and, in so doing, has become an inspiration to others who are presently drug addicted. As an example of this observation, Claimant indicated she is an active member of Narcotics Anonymous and that in December of 1993, she received from N.A. a "Medal of Honor" titled, "Freedom Eighteen (18) Months of Goodwill." Claimant informed the Board she tells her brothers and sisters in N.A. that N.A. works if they work at it. Claimant avers she gives fellow N.A. members hope that their body is clean for a healthy and better life. Claimant further advises her fellow N.A. members to have faith that all problems can be solved and achieved with success. Claimant further states to this Board that her mother tells her she can overcome her mistake and rise higher than ever before serving Carrier's passengers in the Reservations Sales Office. Claimant, speaking from her heart stated she loves her job and both wants and needs her job back.

The Board is convinced that Claimant has finally turned her life around, but with respect to reversing a prior Board and its decision to deny the claim, our hands are tied and we are without legal authority to make any ruling here. Obviously, it took Claimant's second loss of her job to make her realize how valuable work was to her life and her son's well being. While later is better than never, it is simply too late to award the remedy Claimant seeks here. We wish her well in her continuing effort to remain drug free and be a most productive citizen in the greater community.

AWARD

Claim dismissed.

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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 Third Division**

Dated at Chicago, Illinois, this 13th day of August 1997.