

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32496
Docket No. MW-32584
98-3-95-3-515

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Louisville &
(Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Truck Driver D. R. Hamblin for alleged violation of Safety Rule 21 and Operating Rule G, in connection with a test administered on October 31, 1994 which allegedly tested positive for cocaine metabolites, was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement [System File 7(1)(95)/12 (95-0030) LNR].**
- (2) As a consequence of the above-mentioned violation, the Claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."**

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.

By letter dated November 8, 1994, the Carrier notified the Claimant that he "was charged with violation of Safety Rule 21, Operating Rule G and FHWA [Federal Highway Administration] Regulations, in that [he] tested positive for Cocaine Metabolites in connection with a test administered on October 31st, 1994." After an Investigation that was held on November 21, 1994, the Carrier dismissed the Claimant from service effective November 8, 1994.

The Claimant was employed as a Truck Driver when he was randomly selected for testing on July 13, 1994 in accordance with the Federal Highway Administration Program. The results of the test were positive for cannabinoids [metabolites of marijuana]. The Claimant was charged and notified of an Investigation. Rather than submit to an Investigation, the Claimant applied for, and was accepted to participate in the Carrier's Employee Assistance Program [EAP]. The Claimant remained out of service so that he could be treated for substance abuse as part of a rehabilitation program. The Claimant returned to service while being monitored.

On October 31, 1994, while on duty, the Claimant was randomly selected to undergo a drug test. In a memorandum dated November 8, 1994 to Division Engineer Bippus, Medical Review Officer Thomasino verified that the Claimant tested positive for cocaine metabolites. In pertinent part, he stated:

"I have verified the results of this testing to be positive for cocaine metabolites. A copy of the test results is enclosed for your information, file and further handling.

In accordance with company policy, as this is Mr. Hamblin's second verified, nonagreement test, positive toxicological testing result within five (5) years since Mr. Hamblin's return to service and since September 15, 1993, the employee should be immediately charged with a violation of Rule G and/or Safety Rule 21 and FHWA regulations."

Roadmaster Justice presented testimony with respect to the test of the Claimant on October 31 and the testing procedures which followed. The Board is satisfied that there is substantial evidence in the record to establish that the Claimant tested positive for cocaine metabolites on October 31.

The Claimant acknowledged that he was notified that he tested positive on October 31. In light of the test results, it is inadequate as a defense for the Claimant to merely state that he had "no idea" why he tested positive on October 31.

The Organization points out that the "[C]laimant provided his own drug test and it came back negative." The "negative" test results were obtained privately by the Claimant as a result of a test on November 9, 1994.

In this connection, the Claimant requested and paid for that part of the split sample of October 31, 1994 which had not been tested by the Carrier, to be submitted to a private laboratory of his own choice, so that it could be tested. However, the results of this test were not disclosed by the Organization or the Claimant. Such results would have been more trustworthy and credible than the "negative" test which was obtained privately by the Claimant on November 9, 1994, some nine days after the October 31 test which was positive. Moreover, it is reasonable to infer that the results of the October 31 split sample were unfavorable to the Claimant; if the results were favorable it is reasonable to assume that the results would have been disclosed.

The Organization claims that the Carrier failed to afford the Claimant a fair and impartial Hearing because the Conducting Officer allowed "the introduction of testimony/documents unrelated to the specific drug test for which the Claimant was charged, he acted as a witness and reached conclusions about testimony and evidence"

After carefully examining the record, the Board concludes that there is no merit to the Organization's claim. It is the Board's judgment that the Claimant's due process rights were fully protected and he was provided with a fair and impartial Investigation.

AWARD

Claim denied.

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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 25th day of March 1998.