

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32774
Docket No. SG-32761
98-3-96-3-64**

The Third Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation (NRPC-N):

Claim on behalf of J.C. Williams to be reinstated to service with his record cleared of all charges in connection with the investigation conducted on November 9, 1994, and to be made whole for all time and benefits lost as a result of his dismissal from service, account Carrier violated the current Signalmen’s Agreement, particularly Rule 65, when it did not provide the Claimant with a fair and impartial investigation and assessed harsh and excessive discipline against him in this matter. Carrier’s File No. NEC-BRS(N)-SD-689D. BRS File Case No. 9652-NRPC(N).”

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 establishes that on September 6, 1994 the Claimant, who was subject to quarterly drug and alcohol testing as the result of a "Rule G waiver" he had signed on June 10, 1994, was administered an authorized drug screen and that the result of that test was positive for marijuana.

The record evidence further establishes that the Carrier complied with the required protocols for testing the Claimant's urine on September 6, 1994, and there is insufficient medical reason to conclude that the Claimant's positive test was due to anything other than the ingestion of a prohibited, controlled substance.

The Carrier had the right to disregard a subsequent independent drug test which the Claimant submitted, and to conclude that the protocols followed during that subsequent testing were not consistent with the testing procedures required of the Carrier by the United States Department of Transportation. See Public Law Board No. 3783, Award 168 and Public Law Board No. 3845, Award 14.

While the Organization additionally argued on the Claimant's behalf that the discipline in this case was harsh and excessive in view of the Claimant's 18 years of service and his service record which was considered to be in the "overall" good, the question of leniency, in view of the fact that the Claimant twice within a short period of time was found to be in violation of Rule G, is a question to be left to the Carrier's discretion. The Board concludes that, as result of his signing the Rule G waiver on June 10, 1994, the Claimant understood the consequences of his testing positive during the first two years of active service following his return to duty after his first positive test. Accordingly, the claim is denied.

AWARD

Claim denied.

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 23rd day of September 1998.