

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35426
Docket No. MW-33518
01-3-96-3-1069

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly withheld Mr. R. Brewer pending results of a drug and alcohol urinalysis test beginning June **19, 1995** and continuing through July **6, 1995** when he was thereafter allowed to return to service on July 7, 1995. (System File NEC-BMWE-SD-3622 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. R. Brewer shall be compensated for all wage loss suffered on June 19 through and including July 6, 1995."

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 Claimant holds seniority with the National Railroad Passenger Corporation (Amtrak) as a Trackman. On January **2, 1995**, he went out of service due to a disability. He sought to return to service in June 1995. Due to the length of the Claimant's medical absence he was required to undergo a return to duty medical examination. That examination was conducted on Wednesday, June 15, 1995. The medical examination included a urinalysis for alcohol and controlled substances.

On Monday, June 19, 1995, Amtrak was advised by American Medical Laboratories that the Claimant had tested positive for opiate metabolites. Amtrak Occupational Nurse Marianne Letterio telephoned the Claimant and informed him of his positive drug screen. During that conversation, the Claimant told Nurse Letterio the medications he had been taking. Nurse Letterio concluded that none of these medications could have caused a positive test for opiate metabolites so she instructed the Claimant to contact his treating physician or his pharmacist and obtain a complete list of the medications he had taken during the previous 60 days.

The Claimant elected to obtain a list of his medications from his physician. However, his physician was on vacation until July 5, 1995. On July 5, the Claimant obtained a list of his medications from his physician and forwarded the list to Amtrak. The Claimant was returned to service on July 6 and resumed work on July **7, 1995**.

On August **18, 1995**, the Organization presented a claim on behalf **of the** Claimant for his lost straight time pay, overtime and allowances for the period June 19 to July 7, 1995. It is the Organization's position that Amtrak had no right to refuse to allow the Claimant to return to service on June 19, 1995, since he had submitted a list of the medications he had taken during the previous 60 days during his return to duty physical examination on June **15, 1995**.

Amtrak's decision on June **19, 1995**, to require the Claimant to furnish a complete list of the medications he had taken during the previous 60 days was not arbitrary, capricious or unreasonable in the Board's opinion. Rather, there was a rational basis for the decision. The Claimant had tested positive for opiate metabolites and Amtrak wanted to be assured that he could safely perform his duties as an equipment operator. It had the right to hold the Claimant out of service until it could determine that he was physically capable of performing his duties in a safe manner.

The Organization contends that Amtrak's insistence that the Claimant furnish a list of his medications from his physician was unreasonable since he had already listed his medications at his June **15, 1995**, examination. However, Amtrak maintains that it did not obtain this information until after he was returned to service. All Amtrak had on June **19, 1995**, was the Claimant's verbal account of the medications he had taken during the previous 60 days. In the Board's opinion, Amtrak had the right to require the Claimant's pharmacist or physician to verify these medications in order to make a proper determination of his fitness to return to duty since he had tested positive for opiate metabolites.

The Claimant chose to wait until his physician returned from vacation to obtain the information requested by Amtrak on June 19, 1995. He obtained the list of his medications on July 5 and was approved to return to service on July 6, 1995. Once Amtrak determined that the Claimant was fit to return to duty it immediately released him to return to work. Any delay in obtaining a record of his medications was solely attributable to the Claimant. Amtrak was not responsible in any way for this delay. The claim must be denied as a result.

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 26th day of April, 2001.