

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employees  
(The Chesapeake and Ohio Railway Company

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

(1) Claimant P. E. Main shall be compensated for all wage loss suffered by him as a result of being improperly withheld from service because of physical examination administered on March 18, 1986 (System File C-TC-3220/MG-5678)."

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 were given due notice of hearing thereon.

Claimant herein had been on furlough; he was instructed to report for a return to work physical examination on February 17, 1986. Following that medical examination he was found to test positive for drugs, namely marijuana. Claimant was retested on March 18, 1986, and again the test revealed that cannabinoids were present in his system. Following the retest, Claimant was notified by Carrier that it would be necessary for him to be cleared through Carrier's Employee Assistance Program prior to returning to work. By letter dated March 24, 1986, Claimant notified Carrier that he had submitted to a drug test at a local hospital and had been found free of any drugs (test date March 17, 1986). A repeat test was administered by Carrier on May 6 and thereafter Claimant was qualified to return to work. The Claim herein was filed alleging that Claimant was improperly withheld from service on and after March 18, 1986.

The Organization argues that the policy promulgated by Carrier with respect to drugs is premised on the assumption that a reliable and reputable laboratory is used. It is asserted that in this instance no such facility was used. In support of its position the Organization presented a number of articles indicating that a number of laboratories, purportedly reliable, do not meet minimum performance standards. In this dispute, it is argued that Carrier failed to provide any data to establish that the test was properly administered. For that reason it is concluded that withholding Claimant from service was arbitrary, capricious and in bad faith.

The Carrier argues that there has been no showing that the results of Carrier's two tests were in any respect flawed. In addition it is maintained that Carrier has the right to establish medical standards and in this instance those standards were appropriately applied. The simple facts were that Claimant was found to have used marijuana by two tests and was treated thereafter consistently with other employees under Carrier's medical policy.


The Board finds that there has been no showing whatever that the testing procedure employed by Carrier in this instance was flawed in any respect. Mere allegations are insufficient and there was no obligation by Carrier to offer any detailed information with respect to the procedures employed in the absence of specific questions. Concerning the submission of the test result from the independent source employed by Claimant, this Board is not empowered to overrule the decision of Carrier's medical staff with respect to Claimant's fitness for service (see Second Division Award 5021). In sum, the Board finds that the Organization did not meet its burden of proof with respect to any impropriety on the part of Carrier. The Claim is lacking in merit.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1990.