

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
(
(CSX Transportation, Inc.
((The Chesapeake and Ohio Railway Company)

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

Mr. L. Coberly shall be compensated for all compensation loss suffered by him as a result of being improperly withheld from service beginning March 15, 1986 (System File C-TC-3195/MG-5640)."

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.

The parties had entered into a Letter Agreement on February 20, 1986, dealing with return to work physical examinations for furloughed employees. That Agreement provided, inter alia, for drug and alcohol screening.

Claimant herein, who had been on furlough, was notified to submit to a return to work physical examination. He had the examination, which included a drug screen, on February 20, 1986. The report of the screen, dated February 26th, indicated a positive finding for cannabinoids. Claimant was notified of his disqualification on March 6, 1986. He immediately underwent a test by another laboratory of his own choosing and the test results were negative. Carrier conducted another screening test for Claimant on March 18 and on March 31, 1986, he was notified that he could return to service.

The Organization alleges that there are many deficiencies in the drug screening program initiated by Carrier. A host of articles and general comments are used in support of this position (none of which were submitted during the handling of this dispute on the property). Most importantly, the Organization argues that Claimant had never used marijuana and there obviously had been an error in the initial testing procedure. This fact is supported by not only the test he undertook on March 14, 1986, but also in Carrier's subsequent drug screen.

Furthermore, it is maintained that Carrier is made aware of the results of the tests within thirty six hours and there is no excuse for the inordinately long period of time which elapsed in this instance in the notification to Claimant of the results of the first test.

Carrier states that the results of tests for drugs some three weeks after Carrier's initial test are totally immaterial in view of the time lapse between the tests. Further, Carrier insists that there is absolutely no evidence that the initial test was incorrect, was improperly administered or that there was any mixup in the samples, as alleged by the Organization. Most importantly, Carrier insists that it has the sole prerogative of setting reasonable physical or medical standards; further, that employees can be withheld from service if Carrier determines that the employees do not meet those standards. In this instance it was clear that the drug screen indicated a significant problem with Claimant and Carrier had the right to withhold him from service until such time as he was retested and found to be drug free. In this instance Claimant was not treated differently than other employees in the same situation and Carrier believes that the Claim should be rejected.

There are several problems in this dispute. First, as the Board views it, there were no probative facts presented to support the allegation that the testing program was tainted in any way. Mere accusations are insufficient; there must be evidence or testimony to support such allegations. The Organization is correct in that the testing procedure, including the chain of custody of samples, must be fool-proof and secure. But here there was no hard evidence to the contrary. Further, the massive literature citations by the Organization were not handled on the property and are inappropriate for consideration by this Board.

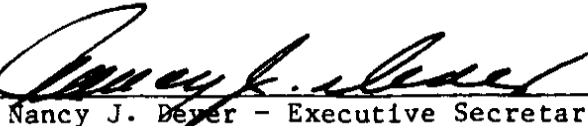
Carrier is correct that it has the right to establish and administer physical or medical standards. That prerogative cannot and should not be challenged if administered properly and in a non-discriminatory fashion. However, in this dispute the time frame for some of the determinations is inexplicable. Given the drug test of February 20, 1986, there is no explanation of why Claimant was not notified until March 6, 1986. The retesting thereafter was reasonably timely; however again the test results from the March 18, 1986 test were received by the Carrier March 21, but were not conveyed to Claimant until March 31. While the Carrier received the test results within 3 days and it had to have its own medical staff review them, the time taken in this case was unreasonable. As a matter of judgement, we believe the delay deprived Claimant of the opportunity to work commencing March 25 and this is improper. Therefore, Claimant shall be made whole for all loss of work opportunity resulting from Carrier's unreasonable delay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1990.