

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31787
Docket No. MS-32461
96-3-95-3-349**

The Third Division consisted of the regular members and in addition Referee Charles J. Chamberlain when award was rendered.

(Carlton L. McCartney

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

"Kindly accept this letter as a supplement submission to the union letter requesting an appeal to the discipline imposed upon the above referenced claimant. The decision of the Division Engineer was unsatisfactory to the myself, the claimant, as well as the union. I am seeking dismissal of the charges, reinstatement to the position I last held with Amtrak, with seniority intact, and full back-pay from the date I was take out-of-service until my return to work is effective.

I, Carlton L. McCartney, was required to submit to a drug screen urinalysis as part of a random testing administered on April 4, 1994. The urine specimen attributed to me tested 'positive' for the presence of drugs. I was disqualified from service due to the alleged presence of cocaine metabolite in my urine. The Carrier charged me with allegedly violating National Railroad Passenger Corporation Rules of Conduct 'A, D G and P' in notice of formal trial dated May 3, 1994."

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 notice of hearing thereon.

The Claimant was required to submit to a drug screen urinalysis as part of a random test administered on April 4, 1994. The urine specimen attributed to the Claimant tested positive for the presence of cocaine metabolites. The Claimant was disqualified from service and charged by the Carrier with violating National Railroad Passenger Corporation Rules of Conduct "A," "D," "G," and "P" in the notice of formal trial dated May 3, 1994.

After three postponements, an Investigation on the charges was held on October 24, 1994.

On November 7, 1994, the Claimant was advised by written notice from the Hearing Officer, Joan C. McDonnell, that it was her decision based on the Hearing record as a whole that he was guilty of the charges stated in the charge letter of April 25, 1994. Also on November 7, 1994, the Claimant was advised by Division Engineer A. C. Fagio that he was dismissed in all capacities.

The decision was appealed by the Organization up to and including the highest officer of the Carrier, Mr. R. F. Palmer and denied by Mr. Palmer on April 13, 1995.

The record shows that the Claimant had signed a conditional reinstatement agreement on December 12, 1992 resolving his appeal from dismissal for violation of Rule G of Amtrak's Rules of Conduct. A condition of his reinstatement was agreeing to submitting to and passing a drug test at least four times a year for the first two years of active service after his return to duty.

An important issue in this case is the position taken by the Organization and Claimant that the chain of custody procedure used throughout the collection and testing process was questionable. The Organization also questions the qualifications of Ms. Juliet Hutchinson who was assigned by Joseph Texeira, nurse for the Amtrak Medical Department, to take the urine specimen from the Claimant. Our analysis of the record in this case does not support the Organization's position that the chain of custody procedure was faulty. The handling of the Claimant's sample is documented in the record. The Claimant's signature on the chain of custody Form G5 acknowledges that the specimen was his and that it had been labeled and sealed in his presence. Additionally, the letter from A. G. Constantino, Ph.D., A.M.L.'s Technical Director of Forensic Toxicology attests to the accuracy of procedures followed and the validity of the tests.

There has been nothing presented by the Organization on the record to support its position of defective procedures. With respect to the challenge by the Organization that Ms. Hutchinson was an unknown quantity and perhaps unqualified, the Hearing Officer advised the Organization in the transcript that she would recess the Investigation to give the Organization an opportunity to obtain her for the Hearing. The Organization stated that it saw no need for a recess. "The Organization and Mr. McCartney are ready to proceed."

Accordingly, the Organization and Claimant waived the right to protest Ms. Hutchinson's role in the urine specimen test given the Claimant.

With respect to the Organization's contentions concerning the reasonableness of Amtrak's medical standards, we concur with the findings in Public Law Board No. 5139, Award 14 wherein it was stated in part "that the record evidence and BMWE arguments do not support the BMWE assertions that the Drug Policy does not include sufficient safeguards to guard against false positive test results."

Claimant stated in the transcript record that he had another test taken on the same day at Med-Path Lab--World Trade Center, the results of which were negative.

We fail to find any evidence of substance that gives credence to the test allegedly taken at the other facility. There is nothing in the record to show procedures followed on the test that the Claimant alleges he had taken. There is no evidence of chain of custody procedures and nothing of substantive value that would impact on the issue in this dispute.

Furthermore, it is well established in both Public Law Board Awards and Awards of this Board that a Carrier is not obligated to accept any test results over which it has no control. (See Public Law Board No. 4061, Award 33; Public Law Board No. 4494, Award 1; Public Law Board No. 4454, Award 14; Special Board of Adjustment No. 235, Award 31; Public Law Board No. 2971, Award 119; and Fourth Division Award 4843.) In the instant case it is well documented as to all procedures and regulations in the chain of custody process. It is clear that they were all followed and documented by their inclusion in the record. Accordingly, we cannot find any merit to this argument by the Claimant.

The record clearly shows that the Claimant signed a conditional reinstatement agreement in settling a prior Rule G case in which he was involved. He was well aware of the consequences of another test which, if confirmed positive, would lead to his immediate dismissal.

The Board cannot ignore the provisions of the Rule G waiver and absent any evidence in the record to show that the procedures followed by the Carrier in this case violated the Claimant's rights, we find no basis for overturning the discipline assessed.

Accordingly, the claim must be 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 26th day of December 1996.