

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31803
Docket No. MW-32305
96-3-95-3-136**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly withheld Mr. R. A. Stevens from service for allegedly providing a urine sample that tested positive for marijuana on May 28, 1993 and continuing until he was permitted to return to service on July 26, 1993 based on a second urine sample provided on June 11, 1993 which failed to show the presence of marijuana (System Docket MW-3189).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. R. A. Stevens' record shall be cleared of any reference to the incident involved here, he shall be removed from having to participate in any random or quarterly testing programs that may be required as a result of the erroneous urine test and he shall be compensated for all wage loss suffered during the period of May 28 through July 26, 1993."**

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.

On May 28, 1993, Claimant was required to submit to a return-to-duty physical exam which included a drug screen. Claimant's drug test was reported as positive for marijuana and he was removed from service. He was returned to service on July 20, 1993, following a second drug test which was negative.

The Organization contends that Claimant never used marijuana and that the positive drug screen was erroneous. The Organization suggests that Claimant's urine sample was mishandled or that the result was a false positive caused by Motrin which Claimant was taking pursuant to his doctor's instructions to manage post-surgical pain.

Carrier maintains that its drug screen was proper. Carrier argues that its documentation, which it provided to Claimant in response to his request, shows the entire chain of custody of Claimant's urine specimen and shows that there were no irregularities in its handling. Carrier further contends that Claimant failed to list any medications that he was taking at the appropriate time for listing them. In any event, Carrier contends, the tests that were used, in particular the Gas Chromatography/Mass Spectrometry test that is used to confirm the results of an initial EMIT test are not susceptible to producing a false positive induced by Motrin.

The Board reviewed the record carefully. We find that there is no evidence that Carrier mishandled Claimant's urine specimen. The documentation of the chain of custody, a copy of which was provided to Claimant in response to his request, indicates no irregularities. Furthermore, we find that Motrin could not have caused a false positive on the tests that Carrier employed. In particular, Motrin and other substances cause false positives in certain EMIT tests due to problems of cross-reactivity. That is, in an EMIT test, an agent is added to the urine to determine whether drug metabolites will react with the agent. However, in certain tests, other substances may also react with the agent. The GC/MS confirmatory test avoids problems of cross-reactivity because it examines the molecular structure of the metabolites present in the urine specimen, instead of relying on a chemical agent with which the metabolites may react. Accordingly, we conclude that 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.