

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31808
Docket No. SG-32438
96-3-95-3-336**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (Amtrak-N);

Claim on behalf of E. K. Murphy for rescission of his letter of waiver dated July 29, 1991 and for payment of all time lost during his suspension from service and removal of all record of the discipline from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 65, when it refused to rescind the Claimant's waiver and provide compensation for time lost while out of service after it was determined that the basis of discipline was not valid. Carrier's File No. NEC-BRS(N)-SD-674. BRS File Case No. 9617-NRPC(N)."

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 June 30, 1991, Claimant was assigned to the Boston Trouble Desk as an Assistant Foreman. Carrier directed Claimant to provide a urine specimen for a random drug test. Claimant refused to do so. Carrier removed Claimant from service and charged him with insubordination and violation of 49 C.F.R. Part 219.603. On July 29, 1991, Claimant signed an agreement waiving his right to a Hearing and resulting in Claimant being suspended for nine months with reinstatement conditioned on Claimant's passing a drug test and being subject to unannounced drug tests four times per year for two years.

On May 18, 1993, Claimant wrote to the Federal Railroad Administration protesting his having been selected for random drug testing in 1991. Ultimately, the FRA determined that the position of Trouble Desk Operator in Boston was not subject to the Hours of Service Act or to the random drug testing provisions of 49 C.F.R. Part 219. Thereafter, the Organization sought to rescind Claimant's waiver.

The Organization contends that it is not bound by Claimant's waiver and that it retains the right to enforce the Agreement. The Organization further contends that Claimant found himself in a no win situation and executed the waiver to avoid the disruption of proceeding to an Investigation and having to fight almost certain dismissal. Furthermore, the Organization maintains that Claimant could do nothing until after he received the FRA's findings and that the Organization acted reasonably soon after receiving those findings.

Carrier maintains that Claimant did not file a claim within 60 days of the date the claim accrued and, therefore, the claim must be dismissed. Carrier further maintains that the claim is moot because Claimant is bound by his waiver agreement. Carrier argues that the FRA finding did not invalidate the underlying discipline because the discipline was premised, not only on an alleged violation of 49 CFR Part 219, but also on Claimant's alleged insubordination.

After careful review, the Board has determined that the claim must be dismissed as time-barred. We are mindful that the Organization could not act until after it received the FRA's findings concerning the applicability of 49 CFR Part 219 to the Boston Trouble Desk. However, Claimant did not request an FRA ruling until May 18, 1993, almost two years from the date of his waiver of Hearing and acceptance of a nine month suspension. Under any possible interpretation of the Agreement, Claimant slept on his rights and the claim is time-barred.

However, the Board observes that ultimately the FRA agreed with Claimant that his position was not subject to random testing. Although we lack the authority to order a remedy in this case, we strongly urge Carrier to place a copy of the FRA decision and a copy of this Award in Claimant's personnel file.

AWARD

Claim dismissed.

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.