

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31841
Docket No. MW-32177
96-3-94-3-602**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Mr. O. M. Washington for alleged violation of the National Railroad Passenger Corporation Rules of Conduct Rules 'D', 'G' and 'L', in connection with a drug screen that tested positive for cocaine metabolite on March 15, 1994, was arbitrary, capricious and based on unproven charges (System File NEC-BMWE-SD-3348D AMT).

(2) As a consequence of the violation referred to in Part (1) above, Claimant O. M. Washington shall be reinstated to service, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

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.

Prior to his dismissal from Carrier's service, Claimant was employed as a Trackman. This dispute arose as a consequence of his returning from furlough status. A prerequisite for his return to work was submission to a physical examination, including a urinalysis. The urine sample attributed to Claimant tested positive for benoylcegonine, a metabolite of cocaine. In a letter dated March 21, 1994, Claimant was directed to appear for an Investigation in connection with his possible violation of Amtrak Rules of Conduct "D", "G" and "L". Claimant had previously signed a Rule G Waiver, and did not meet the eligibility requirements for a Conditional Return-to-Work Agreement. An Investigation was held on May 5, 1994. Following the Investigation, Claimant was dismissed from Carrier's service. That discipline was appealed and progressed in the usual manner.

It is the Carrier's position that it has met its considerable burden of persuasion in this case. It maintains that the chain of custody was maintained, that confirmatory studies also indicated cocaine metabolite, and that, under the circumstances, Claimant was properly dismissed from service.

The Organization asserts that Carrier has not met its burden of persuasion in this case. It points out that the standard of proof for drug testing cases is higher than for other discipline cases. In addition, the Organization contends that the tests in question are inherently unreliable. See for example, Award 35, Special Board of Adjustment No. 925. Finally, the Carrier failed to consider the over-the-counter and prescribed medication Claimant said he was taking, and denied Claimant's reasonable request for a retest, because he knew he had not been involved in the usage of illicit drugs.

The Organization is correct that the Board must require an especially high standard of proof when adjudicating cases involving alleged Rule "G" violations. In this case, the chain of custody is adequately documented on the record, and the multiple aliquot method, including gas chromatography, has been recognized as reliable by most Boards of Arbitration in this and other industries. It should be noted that the Award cited by the Organization to support its position that the tests are inaccurate was rendered in 1986, prior to the issuance of the Federal Guidelines in this area and the improved documentation requirements. Based upon a full review of the record, there is little doubt that the sample tested was Claimant's.

The only remaining issue is whether the medicine Claimant told the attending nurse he was taking 1) could have skewed the results, or 2) should have shown up in the test if the sample were actually his. Claimant's own physician expressed doubt concerning whether the medicine he was taking could have skewed the test results. Both Carrier's physician and the Director of Toxicology for the urinalysis testing laboratory, disputed Claimant's position that the medicines might have shown up falsely as cocaine. The Director of Toxicology further indicated that morphine and codeine would remain in Claimant's system in sufficient amounts to test positive for only 2 to 4 days after the last dosage. Documents on this record indicate that Claimant was administered a morphine compound after his surgery on February 2, 1994 while he was in the hospital. There is no indication on the record that he continued to take a morphine compound once he left the hospital. Further, Claimant declined to present either a prescription bottle or other evidence to indicate that he had continued to take "Tylenol #3" (with Codeine) until just before his test.

In view of the foregoing, the Board finds no basis upon which to overturn Carrier's assessment of discipline.

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.