

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31911
Docket No. MW-32286
96-3-95-3-98**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation
((AMTRAK) - Northeast Corridor**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Mr. A. N. Plant, Sr. for alleged violation of NRPC Rules of Conduct Rules 'D', 'G' and 'L', in connection with his failure to report on Friday, September 30, 1994 at the specified time and place (7:30 A.M., Amtrak Nurse, Penn Station, New York, NY) to provide a urine sample as part of a quarterly drug/alcohol test, was arbitrary, capricious and on the basis of unproven charges (System File NEC-BMWE-SD-3404D AMT).

(2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with seniority and all other rights unimpaired, 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.

On November 10, 1994, the Claimant was dismissed from the Carrier's service after he had been found guilty of Rule 'D' and 'L' violations in that on September 30, 1994, he failed to report to the nurse for a quarterly drug/alcohol urine screen.

The Organization filed the instant claim contending that the Carrier had failed to meet its burden of proof. The Organization argues that the Claimant did show up at the nurse's office on September 30, 1994. However, the nurse had moved his office and allegedly did not give notice to the Carrier's employees. Because the Claimant was not aware that the nurse had moved, he went to the office that he was familiar with and allegedly waited there for one hour. He then left to attend to personal commitments. The Claimant subsequently contracted a virus and was under the care of his personal physician. The Claimant did not return to work until October 5, 1994, at which time he reported to the nurse's office and submitted a urine sample. Claimant then contacted his supervisor and informed him of the events that had transpired.

This Board reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Rules of Conduct B, G, and L when he failed to provide a urine sample when he was ordered to do so. The record reveals that this Claimant began service with the Carrier in April 1980. He tested positive for cocaine in a quarterly drug screen in 1988. He subsequently was conditionally reinstated upon the execution of an agreement in which he agreed to submit to and pass quarterly drug screens. The Claimant was instructed, in September 1994, to appear for a quarterly drug test and he did not appear. The Claimant was subsequently off work for the next few days. The Claimant testified that he attempted to appear for the drug test, but that the office that he had previously gone to had moved and he was unable to find the appropriate place. He then admits that he left the area and did not return for several days.

Although the Organization argues that the Claimant had a justifiable reason for missing the test, the Board disagrees. The Claimant had been given an order to make himself available for the drug test and he did not follow that order. His excuses are somewhat unbelievable and do not justify his failure to live up to the order.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

This Claimant has suffered from drug problems in the past; and when he was conditionally reinstated, he agreed to follow the orders of the Carrier and appear for a drug test whenever ordered to do so. In September 1994, the Claimant failed to appear for the drug test when ordered to do so and, thereby, failed to live up to the terms of his conditional reinstatement. The Carrier need not continue to keep in its employ employees who fail to follow orders, particularly orders that are there to ensure that the employees are not working under the influence of alcohol or drugs. In this case, the Claimant failed to live up to the terms of his conditional reinstatement agreement and failed to follow the orders of his supervisor. The Board finds that the Carrier had a justifiable reason to terminate his employment. Therefore, 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 4th day of March 1997.