

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33495
Docket No. MS-34529
99-3-98-3-174

The Third Division consisted of the regular members and in addition Referee Robert G. Richter when award was rendered.

(Patrick J. Smith

PARTIES TO DISPUTE: (

(Metro-North Railroad

STATEMENT OF CLAIM:

“I was dismissed from work as a machine operator for the Metro-North Railroad in 1997. This was the result of a random laboratory drug test. The sample was submitted on June 20, 1997, and my urine was found to be positive for a controlled substance. It is my contention that this positive reading was not the result of an illegal drug, and my job was never compromised as a result of the substance that was found in my urine. I have evidence to back up my claim. At this time, myself (Patrick Smith) and the Metro-North Railroad cannot come to agreement on this issue. If the National Railroad Adjustment Board finds that my evidence is satisfactory to prove that my job was not compromised, I would like reinstatement of my job as a machine operator for the Metro-North Railroad, and back pay for a portion of the time I have been out of work.”

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 20, 1997 Claimant was given a FRA required physical which included a urine test for alcohol and drugs. On June 26, 1997 Claimant was informed that he had tested positive for the use of a controlled substance. Also, on June 26 the Claimant met with the Carrier's Drug Coordinator. At that time Claimant was informed the sample could be retested and that he could sign a waiver and attend the Carrier's Employee Assistance Program. Claimant refused both offers.

On July 9, 1997 Carrier cited Claimant for a formal Investigation which was held on July 25, 1997. Claimant failed to attend the Investigation. On July 31, 1997 Claimant was dismissed from the service of the Carrier.

The record reveals that the Carrier found the Claimant guilty of the use of a controlled substance (morphine). There is nothing in the record to give cause to overturn the action of the Carrier.

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 22nd day of September 1999.