

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36948
Docket No. SG-37541
04-3-02-3-613

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

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Amtrak (NRPC):

Claim on behalf of J. E. George, for reinstatement to service with his seniority unimpaired, payment for all time and benefits lost including overtime, and his personal record cleared of any reference to this matter, account Carrier violated the current Signalmen's Agreement, particularly Rule 57, when it imposed harsh and excessive discipline against him without meeting the burden of proving the charges, in connection with an investigation held on March 13, 2001, and completed on May 1, 2001. Carrier's File No. NEC-BRS(S)-SD-938D. General Chairman's File No. JY 321081-1020111. BRS File Case No. 12175-NRPC(S)."

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.

The Claimant is a Signal Maintainer who was directed to appear for a formal Investigation on charges that he violated the Standards of Excellence "Alcohol and Drugs" and his Rule "G" Waiver executed on September 3, 1999 by failing a breath alcohol test on February 6, 2001 with a breath alcohol level of .048%. The Investigation commenced on March 13 and concluded on May 1, 2001. It revealed that the Claimant was administered two breathalyzer tests on the date cited and had positive readings of .051% and .048%. As a result of the Investigation, the Hearing Officer issued a decision finding that the charges against the Claimant were sustained. Based upon the findings of the Hearing Officer, the Carrier dismissed the Claimant in accordance with the terms of his Rule "G" Waiver which required the Claimant to pass four tests over a two-year period and be dismissed if he tested positive in any future test. It is this discipline that is protested by the instant claim.

The Carrier argues that there is substantial evidence in the record to support the charge that the Claimant was properly administered a follow-up alcohol test, as well as a confirmatory test, in accordance with protocol, and that any problems with the time and date on the machine or signal interference which may have occurred did not affect the accuracy of the test results which placed the Claimant over the permissible breath alcohol level. The Carrier contends that the Claimant was aware of the terms of his Rule "G" Waiver signed the prior September, and understood that a positive test result would result in his dismissal, and that it acted consistently in enforcing its terms in this situation, relying upon Public Law Board No. 4568, Awards 4, 5, 19, 26, 27, 40, 41; Public Law Board No. 6216, Award 3; Third Division Award 32774.

The Organization contends that the Carrier failed to sustain its burden of proving that the Claimant was guilty of the charges. It notes problems with the date of the testing on the charges, the equipment and manner in which the test was administered, questioning the accuracy of the results in light of the Claimant's denial that he consumed alcohol on the date in question. The Organization relies upon Third Division Awards 19037, 19537, 20766 and 33385 in support of its

position that the Carrier failed to provide substantial credible evidence that the Claimant was intoxicated on February 6, 2001 when he came to work and that the penalty imposed was punitive in nature.

A careful review of the record convinces the Board that there is substantial evidence in the Investigation to support the Hearing Officer's conclusion that the Claimant was guilty of violating the Carrier's Alcohol and Drug Policy and his own Rule "G" Waiver, which was clearly in effect on the date of the breathalyzer examination in February 2001. Despite lengthy questioning of the technician concerning his competency to administer the test and the maintenance of the equipment used, the Hearing Officer's conclusion that the results were accurate is based upon credited evidence that any noted issues did not impact either the propriety of the tests' administration or their ultimate results. The confirmatory test was done in conformance with the waiting procedure and verified that the Claimant was over the acceptable breath alcohol level. Under the specific terms of the Claimant's Rule "G" waiver, a positive test would result in his being dismissed. Because the Claimant tested positive for alcohol on February 6, 2001, the provision is self-executing and the Carrier acted appropriately in dismissing him from service. Accordingly, 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 22nd day of March 2004.