

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43604  
Docket No. MW-44446  
19-3-NRAB-00003-170512**

**The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.**

**(Brotherhood of Maintenance of Way Employes Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (dismissal) imposed upon Mr. J. White by letter dated October 27, 2016 was arbitrary, unwarranted and in violation of the Agreement (Carrier’s File NEC-BMWE-SD-5468D AMT).**
- (2) The discipline (dismissal) imposed upon Mr. J. White by letter dated October 27, 2016 was arbitrary, unwarranted and in violation of the Agreement (Carrier’s File NEC-BMWE-SD-5469D).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimant J. White shall be reinstated to service.**
- (4) As a consequence of the violation referred to in Part (2) above, Claimant J. White shall be reinstated to service.”**

**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 Carrier has employed the Claimant, James White, for approximately two years in the title of Machine Operator when on October 10, 2015, he was notified that a hearing and investigation was to be held for violations of the Drug and Alcohol Free-Workplace Policy (hereinafter referred to as the "Policy"). The charges read as follows:**

**"Specifications. On Thursday, May 14, 2015, APD Officer Christopher Hogan tested drugs and paraphernalia that were found and seized by the staff at the Hampton Inn, 850 Centre of New England Boulevard, Coventry, Rhode Island 02816. The room, at all times, was occupied by Corridor and District Gang Machine Operator James White. The tests were performed on a green, leafy substance and hypodermic needles found in his room. The tests were positive for marijuana and heroin. Hotel staff contacted Amtrak management on May 8, 2015, to report they found needles, a wrapper labeled Suboxone and what appeared to be marijuana left in his room. The items were kept in the hotel safe until they could be tested."**

**The charges are based on allegations that the Claimant, while occupying a hotel room as part of his assignment for the Carrier, was in possession of drugs and related paraphernalia. After several postponements, a hearing and investigation was held on October 17, 2016. On October 27, 2016, the Claimant was notified that the Carrier found him guilty of the charges and was dismissed from service. The record indicates that the Carrier denied subsequent appeals by the Organization and rendered its final decision on January 27, 2017. The Organization rejected the Carrier's decision and filed its notice of intent with the Third Division on April 26, 2107. The claim is now properly before the Board for adjudication.**

**The Carrier maintains that the Claimant violated its Policy when he was in possession of illegal drugs in the company supplied lodging. It argues that the**

**Claimant's statement during the hearing and investigation along with witness testimony and documentary evidence, conclusively establishes that he is guilty of the charges. The Carrier avers that the Claimant does not deny he was in possession of the drug paraphernalia and admits to using drugs. It contends that the Claimant did not appear for several scheduled drug and alcohol tests.**

**The Organization argues that the Carrier's decision to dismiss the Claimant is arbitrary and capricious in that it fails to recognize his efforts to combat his addiction by voluntarily entering the Employee Assistance Program ("EAP"). It maintains that the Claimant should have been given an opportunity for a "Rule G" waiver that would have afforded him an opportunity to return to service subject to the applicable EAP rules and regulations. The Organization avers that previous arbitration awards have ordered rehabilitation as a corrective measure instead of the harsh discipline of dismissal.**

**The Board finds that the Carrier has presented substantial documentary evidence and witness testimony to satisfy its burden of proof that the Claimant has violated its Policy and engaged in prohibited conduct. There is ample arbitral support for the conclusion that an admission constitutes guilt and no further review is necessary. The only remaining question is whether the Carrier abused its discretion by being arbitrary or capricious in deciding to dismiss the Claimant. We find that there is no basis to set aside the Carrier's decision.**

**It is well established in the industry that leniency is reserved to the Carrier where there is no abuse of discretion. Despite the Organization's valiant efforts, the penalty imposed by the Carrier is consistent with arbitral precedent and the application of its Policy. The record establishes that a "Rule G" waiver is used in cases where an employee tests positive for drugs or alcohol. Here, the Claimant did not appear for scheduled drug tests and therefore, the Carrier's decision not to offer a "Rule G" waiver is not arbitrary.**

**Further, when first confronted by the Carrier the Claimant chose to deny he had a drug problem and that he possessed drug paraphernalia. He subsequently admitted drug use and possession of the drug paraphernalia while in service. Legions of arbitration boards have found this conduct to be proper grounds to sustain a dismissal. As such, there is no basis to conclude that the Carrier abused its discretion when it dismissed the Claimant.**

**In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Carrier has established with substantial evidence that the Claimant engaged in prohibited conduct and violated its Policy.**

**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 17th day of May 2019.**