

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44012  
Docket No. SG-44843  
20-3-NRAB-00003-180280**

**The Third Division consisted of the regular members and in addition Referee Erica Tener 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 National Railroad Passenger Corp. (Amtrak):**

**Claim on behalf of J.M Gartside, for 73 hours at his overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 20 and 57, when from June 15-24, 2016<sup>1</sup>, Carrier improperly withheld the Claimant from service without proper compensation pending the results of a drug test, thereby denying him a loss of work opportunity and the wages associated with the performance thereof. Carrier’s File No. BRS-SD-1207. General Chairman’s File No. AEGC # 2016-18-02. BRS File Case No. 15713-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.**

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This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

**Relevant Agreement Language**

**“Rule 20 – Work Week**

The established work week for all employees covered by this Agreement subject to the exceptions contained in this rule, is forty (40) hours, and consists of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven, or four (4) days of ten (10) hours each with three (3) consecutive days off in each seven. Four day assignments shall not be established for individual maintenance positions except by agreement of the parties. The work week may be staggered in accordance with the Company’s operational requirements. So far as practicable the days off for five day assignments shall be Saturday and Sunday or Saturday, Sunday and Monday. The observance of any of the recognized holidays as specified in the agreement will not be construed as a reduction in assigned working time for the week in which such holiday falls.

**Rule 57 – Discipline and Appeals**

- (b) When a major offense has been committed, an employee suspected by the Management to be guilty thereof may be held out service pending trial and decision.

An employee held out of service pursuant to his rule shall remain under pay as though he were in active service on his regular position unless medically disqualified. Compensation under this rule shall continue until the decision is rendered following the trial/investigation, except that if the employee or his duly authorized representative request a postponement of the employee’s trial/investigation, the employee will not be compensated for the period of such postponement.”

The following facts are undisputed. On June 15, 2016, J.M. Gartside (Claimant) was assigned to the position of South Penn Section Maintainer in

Philadelphia, PA. Several days earlier the Carrier's Office of the Inspector General (OIG) received an anonymous tip that the Claimant was seen purchasing and then smoking a "blunt." Based on the tip and a photograph, the Carrier identified the Claimant and required him to submit to a "reasonable suspicion drug test" on June 15, 2016. Upon completion of the test the Claimant was removed from service and deemed temporarily medically disqualified. The test results were negative, and the Claimant was returned to duty on June 24, 2016. The Carrier reimbursed the Claimant for any regular shifts missed as a result of his being held out of service. He was paid forty-eight (48) hours of straight time pay for June 16-17 and 20-23, 2016.

The Organization seeks reimbursement for overtime he missed between June 15 and 24, 2016. It argues the Carrier lacked sufficient grounds to conduct the reasonable suspicion drug test. The Organization argues the Carrier's Drug and Alcohol policy allows for reasonable suspicion testing "when two supervisors...observe and document an on-duty employee having appearance, behavior, speech or body/breath odor..." In this situation, the test was conducted based on observations of an anonymous source and not any supervisors.

The Organization contends the Claimant was effectively suspended disciplinarily without a proper investigation/hearing when he was withheld from service while the Carrier waited for the results. When the Claimant was exonerated, the Organization argues, he should have been made whole including missed opportunities for overtime. The Organization argues Rule 20 of the Agreement supports their request.

The Carrier argues it had the right to require the Claimant to submit to a reasonable suspicion test under their Drug and Alcohol Free Workplace Policy based on the portion cited below:

"A report from an informant may provide sufficient basis to authorize a reasonable suspicion test BUT only if the supervisor first determines that objective factors indicate the information from the informant is credible and prior approval has been received from Amtrak's legal department." (emphasis in original)

The Carrier argues it met all of the criteria in the policy. Supervisor James Steffen identified the Claimant in the photographs that accompanied the report to the OIG and the legal department was consulted.

The Carrier also argues it should not be penalized because there was no violation of the Agreement. Rule 57(b) requires the Carrier to pay an employee withheld from service unless, as in this case, he has been medically disqualified. The Carrier contends it maintains the right to deem an employee temporarily medically disqualified while awaiting drug/alcohol testing result. The Carrier supports their argument by citing awards in which Boards have recognized the distinction between being held out of service for disciplinary purposes and being medically disqualified. Once the results came back negative, the Claimant received pay for the time he was withheld from service. Furthermore, the Carrier argues there is nothing in the Agreement obligating them to reimburse missed overtime opportunities.

The Board has carefully reviewed the record in this matter and finds that the Organization failed to meet its burden to prove the Carrier violated the Agreement when it declined to compensate the Claimant for missed overtime opportunities.

Both parties recognize the unique circumstances that led to the Carrier's decision to require the Claimant to submit to a reasonable suspicion drug test. Based on the conditions as described above, the Carrier met its burden to establish its right to do so. The Carrier did not file charges against the Claimant, but rather temporarily determined that he was medically disqualified for duty pending the drug screen results.

In similar circumstances, the Board in NRAB 3/Award 43069 found "there is nothing in the Agreement that requires that the Claimant be paid at the overtime or double-time rate." For all these reasons, the Board must deny this claim.

**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 28th day of April 2020.