

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44345
Docket No. MW-45567
21-3-NRAB-00003-190490**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(National Railroad Passenger Corporation (AMTRAK) –
(Northeast Corridor**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. S. Rodriguez, by letter dated November 13, 2018, for alleged violation of Amtrak Drug and Alcohol Free Workplace Policy 7.3.4 and Instructions Manual Policy 4.0 & 4.1 on June 22, 2018 was arbitrary and excessive (System File NEC-BMWE-5709D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Rodriguez shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and shall be compensated for all lost wages.”**

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 held the position of Truck Driver in the Carrier's service. At the time of the incident giving rise to this dispute, the Claimant was attempting to return to service after having been granted leave to attend to various personal issues. On June 22, 2018, during what would have been a standard return-to-duty testing event, the Claimant provided a urine sample that was out of temperature range; subsequently, he refused to provide a second sample under direct observation. He refused to sign a chain-of-custody and control form and left the site.

On July 23, 2018, the Claimant was directed to appear for a formal investigation. The notice states, in part:

"As a result, Mr. Rodriguez violated Amtrak's Standards of Excellence and the Carrier's Alcohol and Drug Policy. It is pointed out that Mr. Rodriguez is considered medically disqualified in accordance with the Alcohol and Drug Policy, as verified by the Health Services Department in a notice Memo dated June 22, 2018. Additionally, in accordance with Amtrak's Drug and Alcohol-Free Workplace Program and Guidance Manual 7.3.4, Refusals, Adulterated and substituted samples result in the employee's termination from Amtrak in all capacities."

After a formal investigation on November 1, 2018, the Claimant was found in violation of the Carrier's 1) "Standards of Excellence" pertaining to the section entitled Alcohol And Drugs; 2) Drug and Alcohol Free Workplace Policy 7.3.4 and Instructions Manual Policy 4.0 & 4.1; and 3) Drug and Alcohol Free Workplace Policy 7.3.4 Drug and Alcohol testing procedures 2.9b. The Claimant was dismissed from the Carrier's service, effective immediately.

The Organization filed a claim on the Claimant's behalf of November 26, 2018. The claim was denied by the Carrier on February 25, 2019. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Carrier contends that it has shown with substantial evidence that the Claimant was in violation of its Rules and Policies. The Carrier contends that its

witnesses testified the Claimant's test was reported as a refusal to test. The Carrier contends that the Claimant's refusal to cooperate with the testing was a violation of its Drug and Alcohol Policy.

The Carrier contends that termination is completely warranted in this case. The Drug and Alcohol-Free Workplace Policy clearly states that violation of the policy will result in the employee's termination from Amtrak in all capacities. The Carrier further contends that leniency is the prerogative of the Carrier and it has chosen not to offer it here due to the Claimant's behavior, and his short tenure of service.

The Organization contends that a review of the record shows that the Claimant was suffering from major psychiatric disorders, chemical dependency, and a recent death in the family. The Organization contends that the Claimant was on temporary disability and that after this incident, the Claimant sought and received medical treatment.

The Organization contends that the penalty of dismissal is excessive under all the circumstances. The Organization further contends that the purpose of discipline is to correct, not to punish, and that this excessive punishment is merely punitive.

The Carrier's Standards of Excellence state, in reference to the Drug and Alcohol-Free Workplace Policy,

"4.1 Prohibitions. The following prohibitions apply to all Amtrak employees, contractors and volunteers whenever they are working on or off Amtrak premises; in company supplied lodging, operating an Amtrak vehicle or piece of equipment (or their own vehicle in furtherance of Amtrak business); commuting on rail pass privileges to and from work; and while wearing an Amtrak uniform or lanyard:

- i) The refusal to cooperate with a drug and/or alcohol testing event or otherwise engaging in conduct that obstructs, manipulates or attempts to interfere with the testing process;..."**

The Carrier has shown with substantial evidence that the Claimant's actions on the date of his return-to-work drug screen were reported as a "refusal to test." The

Claimant has apologized for but has not denied any of the charged misconduct. The Claimant's admission eliminates the need for further proof.

The Board also finds that the Carrier's decision to impose the penalty of dismissal was not arbitrary or excessive under the circumstances of this case. The penalty is consistent with the Carrier's Drug and Alcohol-Free Workplace Policy which states, in part, "Test refusals, adulterated and substituted samples shall result in the employee's termination from Amtrak in all capacities." The Claimant was a relatively short-term employee without sufficient mitigating circumstances. The Carrier's decision to dismiss him was consistent with this clearly stated penalty. Therefore, it was neither arbitrary nor unreasonable.

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 6th day of January 2021.