

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44350  
Docket No. MW-45691  
21-3-NRAB-00003-190689**

**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. V. Caccamo, by letter dated April 12, 2018, for alleged violation of Amtrak Drug and Alcohol Free Workplace Policy 7.3.4 on January 25, 2019 was on the basis of unproven charges, arbitrary and excessive (Carrier’s File BMW-153830-D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant V. Caccamo shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he 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 established ten-plus years of seniority with the Carrier. On January 25, 2019, the Claimant underwent return to work drug and alcohol testing. The Claimant's urine sample tested low with respect to its creatinine content and the specific gravity level. On January 30, 2019, the Medical Review Officer notified the Claimant of the results of his test and the Claimant denied adding anything to or substituting the specimen with something else. Thereafter, the Carrier viewed the Claimant's specimen as a substituted sample, not consistent with human urine.

On February 9, 2019, the Claimant was given notice of an investigation in connection with the following charge:

**“On January 25, 2019 EWE Vincent Caccamo was required to provide a urine sample as part of a Company Return to Duty testing event. The specimen provided by Mr. Caccamo was not consistent with normal human urine. The MRO has reported a Refusal - Substituted sample. As a result, Mr. Caccamo violated Amtrak's Standards of Excellence and the Carrier's Alcohol and Drug Policy. It is pointed out that Mr. Caccamo is considered medically disqualified in accordance with the Alcohol and Drug Policy, as verified by the Health Services Department in a notice Memo dated February 8, 2019. 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 April 4, 2019, the Claimant was found in violation of the Carrier's "Standards of Excellence" ("Alcohol and Drugs"); Drug and Alcohol Free Workplace Policy 7.3.4 and Instructions Manual Policy 4.0(i); Drug and Alcohol testing procedures 2.9a Drug Results; 2.9b (Alcohol Results) Refusal to test, Test refusals, and was dismissed from the Carrier's service.

By letter dated April 23, 2019, the Organization appealed the assessed discipline. By letter dated May 2, 2019, the Carrier denied the Organization's appeal. 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 provided substantial evidence that the Claimant presented a substitute sample during Return to Work testing. The Carrier contends that its Drug and Alcohol Free Workplace Program, Policy Number 7.3.4, §2.9.b states that “[t]est refusals, adulterated and substituted samples shall result in the employee’s termination from Amtrak in all capacities.” Therefore, the Carrier contends that the penalty of dismissal was neither arbitrary nor excessive.

The Organization contends that the Claimant was denied a fair and impartial hearing and the Carrier failed to meet its burden of proof. The Organization contends that there were several explanations for the sample results and that only one pointed to the Claimant’s guilt, so the Carrier has failed to show that the Claimant acted wrongly.

The Carrier presented substantial evidence that the specimen that the Claimant provided during his return to work testing was inconsistent with human urine. Thereafter, the Claimant did not put forward any explanation for this result, other than a self-serving denial. The Organization has failed to disprove the clear and convincing proof offered by the Carrier.

Furthermore, the Carrier’s policy makes clear that providing an adulterated sample “shall result” in the employee’s dismissal. The penalty 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.