

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44761
Docket No. MS-46457
22-3-NRAB-00003-210370

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(A. R. Dougal

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“As a result of the violation of the Agreement referenced above, I request that the Carrier immediately compensate me, Alexander Dougal, for all losses suffered including employment with all my seniority intact, straight time wages, overtime wages at 1.5 times the rate of pay at the time of my dismissal, benefits, railroad retirement credits and any other losses suffered as a result of the Carrier’s improper discipline.”

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.

After investigation held July 2, 2020, the Claimant was dismissed for testing positive for marijuana (THC metabolite) on a federal random test on April 13, 2020

According to the Claimant, the positive test result was due to a friend placing THC oil into a desert eaten by the Claimant. Tr. 33-34. The Claimant contends he was unaware that his friend did so.

The Carrier's Drug & Alcohol-Free Workplace Program Policy is clear [emphasis added].

- “• 9.1 Manufacture, Distribution, Sale, Possession, Use or Presence. The manufacture, distribution, dispensing, sale, possession, use or presence in the body of illicit drugs or alcohol or controlled substance prohibited by federal or state regulations, including marijuana, notwithstanding any statute, ordinance, regulation, or other law that legalizes or decriminalizes the use or possession of marijuana, whether for medical, recreational, or other use;

* * *

Consequence 15.2 Positive Test. Except for a positive return-to-work test as described in Section 13.2.4, an employee who tests positive on a drug or alcohol test will be terminated from employment.”

The presence of THC metabolite as shown by the test result is substantial evidence that the Claimant violated the Carrier's Policy. Intent is not needed to show a violation of the Policy. If the metabolite is present as it was as demonstrated by the Claimant's test, how it got into the Claimant's system is not relevant. The Policy looks to “presence in the body” of the prohibited substance.

A negative test result by a private testing service not under the Carrier's control which was taken at a later date does not change the result. The Carrier is entitled to rely upon the testing laboratory of its choice for results coming from date and time an employee is directed to submit to the testing procedure.

Dismissal was not arbitrary. The stated exception in the Policy is for a “return-to-work test”. The Claimant was required to test as a result of a random test pursuant to federal requirements. The Claimant's circumstance does not fall within the noted exception in the Policy. In any event, we have no basis under the facts presented in this case to find dismissal an arbitrary imposition of discipline.

We have considered procedural arguments made on the Claimant's behalf and do not find that those arguments can change the result.

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 29th day of July 2022.