

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 44765  
Docket No. MS-46506  
22-3-NRAB-00003-210463

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

(J. Onofrio  
**PARTIES TO DISPUTE:** (  
(National Railroad Passenger Corporation (AMTRAK)

**STATEMENT OF CLAIM:**

“I do not believe that this hearing was fair and I do not believe that my termination was warranted. I would really appreciate having this matter reviewed again and to be given the opportunity to keep my job. If necessary, I will seek representation from an attorney to represent me at a hearing.”

**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 August 20, 2020, the Claimant was dismissed for leaving the Carrier's property after being advised that he had to undergo a random FRA drug test on May 18, 2020.

The hearing before this Board was held by video. Prior to the date of the hearing, the Claimant was notified of the hearing and on the date of the hearing the

Claimant was given notification of the progress of other hearings so that he could join for his hearing when his hearing was called, but the Claimant did not appear.

On the date of the incident, the Claimant was instructed by his supervisor that he was to report for a random FRA drug test. The Claimant did not report for the test as directed, but instead the Claimant left the Carrier's property.

The Carrier treated the Claimant's not submitting to the drug test as a refusal to test under its Drug and Alcohol Policy which provides, in pertinent part:

**“9.0 PROHIBITIONS**

\* \* \*

**9.5 Interference with a Testing Event/Failure to Test.** The refusal to cooperate with a drug and/or alcohol testing event; engaging in conduct that obstructs, manipulates or attempts to interfere with the testing process; failing to provide a urine, oral fluid or hair sample when directed including marking off or leaving the workplace once a testing event has been announced.

\* \* \*

**14.0 UNABLE/UNWILLING TO TEST**

**14.1 Refusal to Test.** Employees are required to cooperate with all aspects of the testing event. A refusal to test will be considered a “positive” result.

\* \* \*

**15.0 CONSEQUENCES**

\* \* \*

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

While the Claimant did not appear at the hearing before this Board, he did appear at the investigation on the property. The Claimant did not testify at the

investigation, but gave a closing statement. Tr. 47-48. In that statement, the Claimant contended that he came to work and did not feel well and considered leaving work, but remained because the gang was short. The Claimant further stated that when he arrived at the job site, he inquired of his supervisor whether there was enough manpower and, if there was, whether the Claimant could leave work. According to the Claimant, he was told he could leave and he should see a doctor in the morning. Further, according to the Claimant, when he got into his vehicle to leave, his supervisor informed him that a text was received instructing the Claimant to take a drug test. The Claimant asserts that he was on FMLA from an injury and was going through personal problems and it was not safe for him to be at work.

The evidence shows that the Claimant was instructed to take a drug test and did not comply with that instruction, but instead left the Carrier's property as charged. Under the Carrier's Policy quoted above, refusing to take a drug test is the equivalent of a positive test and is grounds for dismissal. Substantial evidence of the charged misconduct has been shown and, under the circumstances, this Board finds that dismissal of the Claimant was not arbitrary.

Even if Claimant's assertions in his statement at the investigation are considered and he did not feel well as he asserts, nothing prevented the Claimant from complying with the instruction to simply take the drug test. No safety issues could have arisen from the Claimant's merely appearing for the test.

No mitigating circumstances have been presented. The claim shall be denied.

**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 29<sup>th</sup> day of July 2022.