

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45019
Docket No. MW-47607
23-3-NRAB-00003-220610**

The Third Division consisted of the regular members and in addition Referee Rachel Goedken when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak) –
(Other than Northeast Corridor**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. J. Jozsa, by letter dated August 4, 2021, in connection with his alleged violation of the Carrier’s Drug & Alcohol-Free Workplace Program Policy was excessive, unjustifiable, erroneous, capricious, extreme and unwarranted.**
- (2) As a consequence of the violation referred to in Part (1) above, we request that “*** the Carrier make Mr. Jozsa whole, restoring all lost wages and benefits beginning July 20, 2021. Additionally, we request these charges be expunged from his personnel file and he otherwise be made whole.”**

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.

Claimant J. Jozsa established and maintained seniority in the Carrier's Maintenance of Way Department. On the dates leading up to the instant dispute, the Claimant maintained ten (10) years of employment with the Carrier with no prior discipline.

On July 12, 2021, the Claimant was subject to federal random urine drug testing. The Claimant subsequently complied and submitted a urine sample as required. Thereafter, the Claimant was removed from service and by letters dated July 21 and 22, 2021, the Carrier notified the Claimant to attend a formal investigation into allegations that the results from the random drug screen taken on July 12, 2021, were reported as positive for marijuana.

Following a change of hearing location, a formal investigation was ultimately held on July 28, 2021, the Claimant and a representative from the Organization appeared and the matter was carried through to conclusion. By letter dated August 4, 2021, the Carrier informed the Claimant that he had been found in violation of Carrier's Drug & Alcohol-Free Workplace Program Policy and was immediately dismissed from service.

The Organization appealed the matter to the Carrier by letter dated August 13, 2021, contending that the Carrier failed to provide the Claimant a fair and impartial hearing, meet its required burden of proof and, ultimately, that the discipline imposed was excessive and unwarranted. Thereafter, the claim was handled on the property in the ordinary and usual manner and now comes before this Board for final adjudication.

The Organization first argues that the Carrier failed to provide the Claimant a fair and impartial hearing, in violation of Rule 15. Specifically, the Organization asserts that the Carrier prejudged the Claimant by withholding him from service pending investigation, by denying the Organization the ability to preserve the integrity of the transcript through a voice recording, by the Hearing Officer's overruling the Organization's numerous objections during the hearing investigation,

including that the hearing was being held by Zoom, and by the Hearing Officer's access to evidence prior to the investigation hearing. However, a review of the record does not support the Organization's assertions that the Claimant was denied a fair and impartial hearing through these actions.

Second, the Organization argues that the Carrier did not meet its burden of proof because it failed to provide a copy of the laboratory's positive test result. The record contains a chain of custody form completed by the Claimant and the collector, the Medical Review Officer's (MRO's) Final Report confirming a positive test result, and the MRO's letter to the Claimant confirming their conversation about the positive test result. However, the record does not contain the laboratory's drug test report.

The Carrier maintains that the documents provide a timeline and chain of custody for the specimen submitted by the Claimant. The Carrier relies on the MRO's Final Report to demonstrate receipt of the specimen at the facility and the results of the test. The Carrier also relies on the letter from the MRO to Mr. Jozsa, confirming their conversation and the MRO's final decision, to demonstrate that the testing facility received the specimen intact and tested the specimen twice as is required.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. Rather, our function is to rule on the question of whether there is substantial evidence to sustain a finding of guilty. See Third Division Award 41038.

Here, the Carrier terminated the Claimant for testing positive in a random drug test but did not provide evidence from the laboratory demonstrating that positive drug test result. The MRO's Final Report and the MRO's letter to the Claimant demonstrate that the MRO performed the MRO's required actions. However, the MRO's documentation is not a substitute for the laboratory's drug test report. The Board cannot infer or assume facts not in the record. Accordingly, substantial evidence does not exist to sustain the finding against the Claimant. Since the Carrier bears the burden of proof in discipline cases, and the Carrier has failed to meet that burden, the Board has no choice other than to sustain the claim.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 3rd day of August 2023.