

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 33

Case No. 33

System Docket No. BMW-E-D-231

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Bruce Townsel was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Scheduled Agreement.

(b) Claimant Townsel shall be reinstated into Carrier's service with all seniority entitlements and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule 15 of the Scheduled Agreement.

FINDINGS

Based on a test finding him positive for cocaine metabolites, the Claimant signed a Rule G Waiver Agreement on December 17, 1993, enabling him to continue work under specific conditions. One of these conditions is as follows:

I further understand that if I test positive in any future drug/alcohol test, including tests taken as part of any physical examination, I will be dismissed from all Amtrak service.

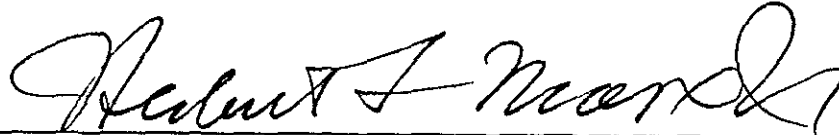
The Claimant was first tested under his Rule G Waiver requirement on July 5, 1994, and the report submitted to the Carrier from the testing laboratory showed he was again positive for cocaine metabolites. Following an investigative hearing, the Claimant was dismissed from service on August 5, 1994.

During the investigative hearing, the Organization raised numerous questions concerning the authenticity of the test results and argued that laboratory representatives should have been available to answer such inquiries. The laboratory had, however, submitted a "litigation package" detailing its testing procedures as well as providing information as to the Claimant's test. In the absence of any specifically raised doubt as to any step in the testing procedure, the Board finds no basis to question the test results.

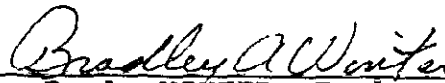
As noted above, the Rule G Waiver Agreement provides that a positive drug test during the follow-up period results in the self-executing consequence of dismissal from service. The Board has no basis to interfere with this predetermined result.

A W A R D


Claim denied.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 6-28-95