

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 60

System Docket No. BMWE-438D

STATEMENT OF CLAIM

Claim of the Brotherhood that:

(a) Carrier's dismissal of Claimant Daniel McCarthy 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 McCarthy 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

On December 21, 2000, the Claimant signed a Rule G Waiver Agreement, having tested positive for cocaine. The Agreement included the prescribed requirements as to random testing over a two-year period. On October 29, 2001, the Claimant was directed to undergo a drug/alcohol test. The urine sample he provided was

unacceptable, because it did not meet the minimum temperature level. This indicated that the Claimant had altered his specimen, which, if proven, is equivalent to refusal to be tested.

Despite this, the Claimant was given the opportunity to provide another sample, which proved to be positive for cocaine. He was subject to two charges, one concerning the unacceptable sample and the other concerning his violation of the Waiver Agreement. The parties agreed to combine the charges in a single investigative hearing. Following the hearing, the Claimant was dismissed from service.

The violation of the Waiver Agreement was clearly established, fully supporting his dismissal from service. In view of this, the Board need not review the further charge that he "intentionally interfered with the integrity of the testing process".

Since the Claimant was notified of the hearing at his address of record and was present for the investigation, there is no merit in the Organization's contention that he did not receive proper notification.

The Organization advised the Claimant of his opportunity to be present at the Board's hearing, but he did not appear.

A W A R D

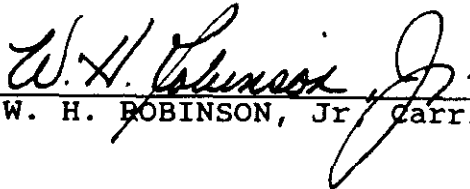
Claim denied.



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



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: June 18, 2002