

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 62

System Docket No. BMW-459D

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Carl Lucas 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 Lucas 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

The Claimant was subject to an investigative hearing under the following Charge:

Development of facts and determination of your responsibility, if any, in that on Friday, June 28, 2002, you intentionally failed to participate in a follow-up drug test pursuant to a Rule G Waiver Agreement (specifically Item #4) signed on October 26, 2001. Your non-compliance with these instructions and failure to cooperate with the testing procedures, the latter of which equates to a positive test result, constitute

violations of PERS 19, Drug and Alcohol Guidelines, and Amtrak's Standards of Excellence, those sections entitled Alcohol and Drugs and Professional and Personal Conduct.

Following the hearing, the Claimant was dismissed from service.

The record shows that the Claimant was directed to submit to a follow-up drug and alcohol test on June 28, 2002, as part of the procedure under the terms of his Rule G Waiver. He appeared for this purpose at 8:55 a.m. While awaiting the arrival of the laboratory technician to administer the test, the Claimant left the testing site. He could not be located on the property, and his vehicle could not be found in the parking lot.

At approximately 1:10 p.m., the Roadmaster received a telephone call from the Claimant, who stated that he had suffered an attack of diarrhea and had gone home. The Carrier concluded that the Claimant's departure from the test site was a "failure to cooperate", which is deemed, under the Carrier's Drug and Alcohol Guidelines, to equate to a positive test result.

The Organization argues that the Claimant simply acted in response to his claimed medical emergency and that the Carrier should have made further efforts to locate the Claimant, including a telephone call to the Claimant's home. The Carrier responds by noting that the Claimant could have availed himself of toilet facilities on the property; further, he waited four hours before reporting his condition.

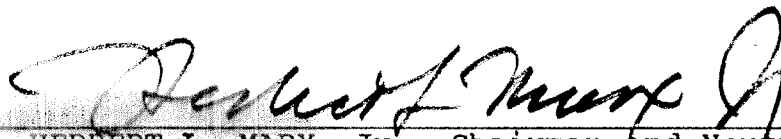
It must be remembered that the Claimant was in a "second chance" situation, having earlier admitted to an alcohol offense

and submitting to the specific Rule G Waiver conditions. The Board finds the Carrier properly concluded that the Claimant had taken deliberate action to avoid the test. Any delay could well have affected the test result. The Claimant's contention as to a medical emergency did not justify his disappearance from the test site and/or his delay in advising the Carrier for four hours.

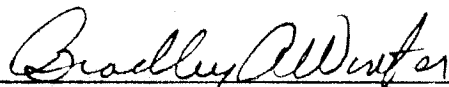
Refusal or delay in submitting to a drug/alcohol test is established by the Carrier's policy and by general practice as the equivalent of a positive test result. Under the Rule G Waiver provisions, dismissal from service was the inevitable result.

A W A R D

Claim denied.



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



B. A. WINTER, Employee Member



RACHELLE A. MIELE, Carrier Member

NEW YORK, NY

DATED: April 21, 2003

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