

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 5139

Award No. 2

Case No. 2

Referee Fred Blackwell

Carrier Member: L. C. Hriczak

Labor Member: Jed Dodd

Parties To Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Statement Of Claim:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when Maintenance of Way employees possessing Southern District seniority rights (excluding New York Division Structures Department) were withheld from service beginning March 4, 1986 for allegedly testing positive on EMIT drug screen urinalysis tests (System File NEC-BMWE-SD-1568).
2. All Maintenance of Way employees possessing Southern District seniority rights (excluding New York Division Structures Department) who were withheld from service as a result of the tests referred to in Part (1) above shall be returned to service with seniority and all other rights unimpaired and they shall be compensated for all wage loss suffered.

Findings:

Upon the whole record and all the evidence, and after March 18, 1992 hearing in the Carrier's Offices, Philadelphia, Pennsylvania, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; and that this Board is duly constituted by Agreement and has jurisdiction of the parties and of the subject matter.

Decision:

Claims dismissed and denied.

PUBLIC LAW BOARD NO. 5139 / AWARD NO. 2

OPINION

This case arises from the appeal of the Organization of the Carrier's action beginning March 4, 1986, whereby the Carrier withheld unnamed Claimants from service on the ground(s) hereinafter indicated.

I. FACTS

Based on study of the record and arguments presented by the parties at the hearing of this matter in the Carrier's Office in Philadelphia, Pennsylvania on Wednesday, March 18, 1992, the following Findings of Fact are hereby made:

1. The record contains allegations that unnamed Claimants possessing Southern District seniority rights (excluding New York Division Structures Department) were withheld from service effective March 4, 1986, for allegedly testing positive on EMIT drug screen urinalysis tests.

II. FINDINGS AND CONCLUSIONS

After due study of the foregoing and of the record as a whole, inclusive of the submissions presented by the parties in support of their respective positions in the case, the case is disposed of on the basis of the following Findings and Conclusions:

1. In regard to procedural matters, the Board concludes and finds that the confronting record contains no procedural irregularities or due process defects that warrant altering the Carrier's action or that preclude Board consideration of the merits of the case.

2. As regards the merits of the case, the record contains allegations that as a re-

PUBLIC LAW BOARD NO. 5139 / AWARD NO. 2

sult of a return-to-duty physical examination, including a drug screen conducted in early 1986 for each Claimant, a number of Maintenance of Way Employees possessing Southern District Seniority were withheld from service on the basis of lab findings on each Claimant's drug test.

3. In assessing the foregoing and the entire record, the Board concludes and finds as follows:

(a) The Board finds that this Board's Award No. 14 - Case No. 14 (06-09-92), which ruled that the Amtrak Drug Testing Policy is reasonable and not barred by the AMTRAK-BMWE Agreement, is applicable to this case.

(b) The Board further finds that under Award No. 14, any named and identified Employee alleging that his rights have been violated by improper application of the Amtrak Drug Testing Policy may exercise his rights to make a formal protest about said improper application of the policy to him and to have such protest progressed to adjudication before a Railroad Adjustment Board.

(c) Inasmuch as the group claims in this case do not constitute protests by individually named Employees alleging improper application of the Policy to a named Employee, there is no basis for entertaining the herein group of claims by unnamed Claimants.

In view of the foregoing, and based on the record as a whole, the claims will be dismissed and denied.

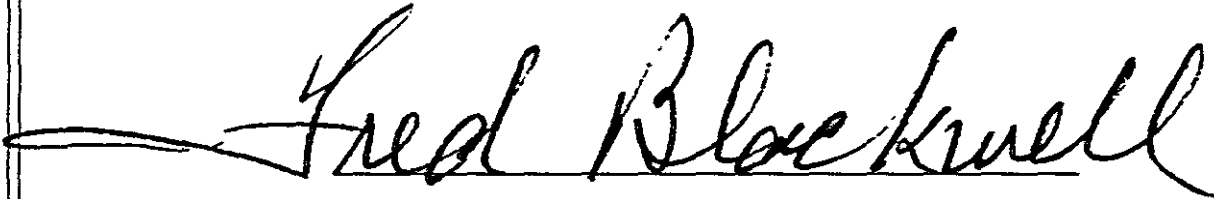
PUBLIC LAW BOARD NO. 5139 / AWARD NO. 2

AWARD:

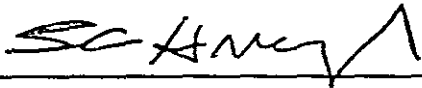
The record provides no basis on which the herein claims could be sustained.

Accordingly, the claims are hereby dismissed and denied.

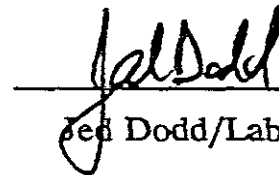
BY ORDER OF PUBLIC LAW BOARD NO. 5139.

A large, stylized handwritten signature in cursive script that reads "Fred Blackwell".

Fred Blackwell/Neutral Member

A handwritten signature in cursive script that appears to read "L. C. Hriczak".

L. C. Hriczak/Carrier Member

A handwritten signature in cursive script that appears to read "Ted Dodd".

Ted Dodd/Labor Member

Executed on JULY 27, 1992

BMWE\5139\Award-2J15