

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 5139

Award No. 3

Case No. 3

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:

[As stated in the submissions and not repeated herein.] System File NEC-BMWE-SD-1569

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; that the Claimant, who was duly notified of said hearing and of his right to be present and participate in same, did not attend said hearing; and that this Board is duly constituted by Agreement and has jurisdiction of the parties and of the subject matter.

Decision:

Claims denied.

OPINION

This case arises from the claims for compensation submitted in behalf of Claimant

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T. McFarland and forty-six (46) other named Employees of the Carrier who were withheld from service in May and June 1986 pursuant to the AMTRAK Drug Policy for allegedly failing to pass a drug screen urinalysis test during a recall-from-furlough physical examination.

In support of the claims the Organization contends that the Carrier's Drug policy violates the applicable Agreement; that the Carrier action of withholding the Claimants from service constitutes de facto suspension of Claimants by the Carrier without compliance with the Agreement's disciplinary procedures; and that there is no valid basis for the Carrier's contention that the Claimants were withheld from service on medical grounds. The Organization further submits that the EMIT test used by the Carrier is unreliable and not relevant to Rule G or Safety Rule violations because the test does not measure impairment due to drug use.

After due study of the whole record the Board concludes and finds that a denial of the subject claims is appropriate on the basis of this Board's Award No. 14 - Case No. 14 (6-9-92), which ruled that the Amtrak Drug Testing Policy is reasonable and not barred by the AMTRAK-BMWE Agreement. That Award addressed the basic contentions made in this case by the Organization and it is not necessary here to repeat or quote the rulings in that Award.

Beyond this the Board specifically finds that the Carrier did not dispense de facto discipline by the action of withholding the Claimants from service on the basis of a drug screen analysis alleged to be positive for drugs prohibited by the Carrier's Drug Policy.

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Said withholding from service was an administrative action that is subject to the right of challenge under the Agreement's grievance procedure by any Employee who contends that the policy was improperly applied to him. An Employee who prevails in such a challenge would be entitled to a remedy, including a compensatory award in appropriate circumstances. For elaboration of the Employee's right to challenge actions under the Drug Policy see this Board's Award No. 2.

However, none of the Claimants have protested that the findings in the urinalysis test were incorrect or otherwise improper and hence there is no basis on which lost wages could be considered. In this regard it is pertinent to note that since the information concerning the drug tests is confidential medical information unless released by the individual Employee, the Carrier was under no obligation to provide such information to the Organization in the absence of the consent of the Claimants.

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

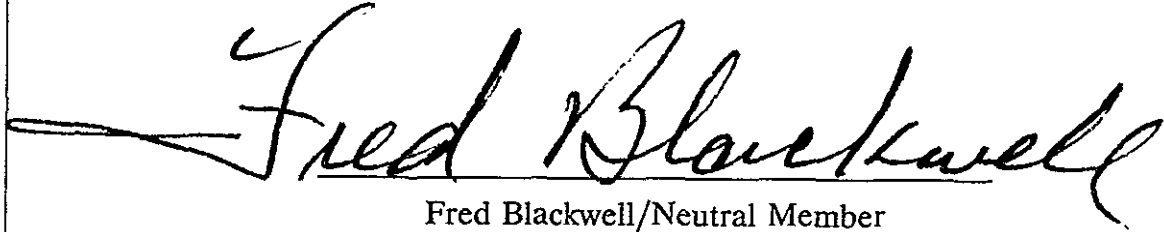
AWARD:

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

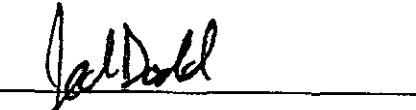
Accordingly, the claims are hereby dismissed and denied.

BY ORDER OF PUBLIC LAW BOARD NO. 5139.

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Fred Blackwell/Neutral Member


L. C. Hriczak/Carrier Member


Jed Dodd/Labor Member

Executed on 7/27, 1992

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