

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 64

System Docket No. BMW-474D

STATEMENT OF CLAIM

Claim of the Brotherhood that:

(a) Carrier's dismissal of Claimant Scott Murphy 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 Murphy 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 September 6, 2002, the Claimant signed a Rule G Waiver, based on having tested positive for marijuana metabolites as part of a return-to-duty physical examination on July 22, 2002. Following compliance with initial requirements of the Waiver, the Claim-

ant was permitted to return to service. The Waiver also includes a further requirement to submit to drug/alcohol testing and states:

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.

On March 19, 2003, the Claimant was subject to a drug/alcohol test, under the terms of his Rule G Waiver; he again tested positive for marijuana metabolites. Following an investigative hearing, the Claimant was dismissed from service.

In defense of the Claimant, the Organization argued that the Carrier's Employee Assistance Program bears some responsibility, because it "did not stay in contact with the Claimant nor did [the EAP counselor] require that he stay in contact". This argument was also made in Award No. 66, which involved similar circumstances. As in Award No. 66, the Board is not persuaded by this view, since utilization of EAP guidance is necessarily a matter of the employee's initiative.

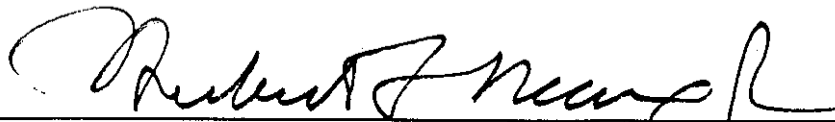
The Board also finds unconvincing the Organization's reference to serious personal events in the Claimant's life. It must be remembered that the granting of a Rule G Waiver constitutes a further opportunity for the Claimant; the need for compliance with the Carrier's drug/alcohol policy becomes even more binding in these circumstances.

As noted by the Carrier, the Rule G Waiver is self-executing. The Claimant's positive finding in a properly authorized and conducted test is inevitable cause for termination of employment.

The Claimant was present at the Board's hearing and was afforded the opportunity to make a statement.

A W A R D

Claim denied.



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



B. A. WINTER, Employee Member



ROCHELLE MIELE, Carrier Member

NEW YORK, NY

DATED: 12/2/03