

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 5139

Award No. 12

Case No. 12

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, as a result of an alleged positive reading on an EMIT urinalysis test, Mr. J. Matthews was withheld from service from July 20 through July 28, 1987 (System File NEC-BMWE-SD-1995).
2. As a consequence of the violation referred to above, Claimant J. Matthews shall be allowed sixty (60) hours pay at the EWE "B" rate of pay.

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:

Claim Denied.

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OPINION

The Claimant, Mr. J. Matthews, claims entitlement to compensation for lost wages in the period July 20 - July 29, 1987.

The circumstances giving rise to the claim are that as part of a periodic physical examination of Claimant on July 13, 1987, the Claimant was administered a drug screen test that tested positive for cannabinoids (marijuana). On July 20, 1987, the Carrier notified the Claimant of the test results and of the fact that he was being withheld from service because of the positive findings for cannabinoids. The Claimant tested negative for prohibited drugs on a retest conducted on July 28, 1987, and was returned to active service on July 29, 1987.

* * * * *

The Organization's challenge that the Carrier's Drug Policy, per se, is invalid has been considered and rejected by this Board in its Award No. 14 issued on June 9, 1992. Therefore, the questions raised and arguments made in that challenge do not warrant further treatment in this Opinion.

Unique to this case, however, is the Organization's contention that the Claimant requested to have a confirmation test performed on his July 13, 1987 urine specimen, at his own expense, and that the Carrier denied such request. The Carrier contends that the Carrier did not deny a request by Claimant for a confirmation test and that further research revealed that a confirmation test was conducted by the Mid Atlantic Regional Laboratory, Kensington, Maryland, and that the original positive finding for marijuana was

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confirmed by a Mid Atlantic Regional Laboratory Report dated July 18, 1987 (Attachment to Carrier Exhibit No. 11).

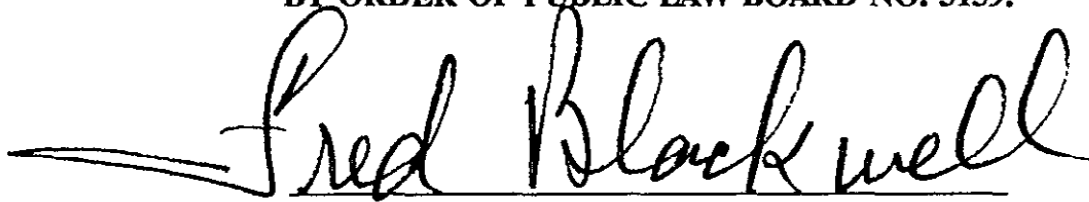
In assessing the foregoing, and the entire record, the Board concludes that the issue of whether the Claimant requested and was denied a confirmation test is rendered irrelevant by the July 18, 1987 Report of the Mid Atlantic Regional Laboratory, which report evidenced that the original findings of positive for marijuana on the Claimant's July 13, 1987 urine specimen was confirmed as positive for marijuana in a second confirmation test. The July 18, 1987 Report thus negates the Claimant's challenge to the validity of the original findings on the specimen of urine that was taken from Claimant during the July 13, 1987 physical examination. Accordingly, the claim will be denied.

AWARD:

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

Accordingly, the claim is hereby denied.

BY ORDER OF PUBLIC LAW BOARD NO. 5139.



Fred Blackwell, Neutral Member



L. C. Hriczak, Carrier Member

Executed on 7/27, 1992



Jed Dodd, Labor Member

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