

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK - Northeast Corridor)

Case No. 172

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Trackman L. A. Miller for violation of NRPC Rules of Conduct Rules 'D', 'G', and 'L' on January 21, 1994 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-3307D).
2. The Claimant shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant L. A. Miller was employed by the Carrier as a trackman with the Carrier's track laying system.

On September 23, 1991, the Claimant signed a Rule G Waiver after testing positive for cocaine. As part of the Rule G Waiver provisions, he was to complete a recommended treatment plan, which he did and subsequently, returned to service on October 15, 1991. In addition, he was to undergo random quarterly drug screening tests following his return to service with the understanding that if he tested positive during these screens, he could face automatic dismissal.

On October 12, 1993, the Claimant was instructed by the Carrier to provide a urine sample for a follow-up drug test. The test results revealed that the Claimant was positive

for cocaine metabolites. On January 21, 1994, after being found guilty of violating a Rule 'G' Waiver, the Claimant was dismissed from service.

The Organization filed a claim on behalf of the Claimant arguing that the Carrier had no "probable cause" to test the Claimant since his two-year period ended. The Carrier argues that the Claimant was subject to follow-up testing for two-years of active service following his return to work. Since the Claimant returned to work on October 15, 1991, the Carrier argues that it was within the two-year period when it tested the Claimant on October 12, 1993.

The parties not being able to resolve the issue, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating his Rule G Waiver when his urine tested positive for cocaine on October 12, 1993. The record reveals that the Claimant returned to work after signing the Rule G Waiver on October 15, 1991. The Carrier reserved the right to test the Claimant from time to time during the next two years. The October 12, 1993, date was within the two-year period.


This Board has previously rejected the Organization's argument that the Rule G Waiver extends from the date that it was signed and not from the date that the Claimant returned to work. This Board also rejects the Organization's argument that the Carrier had no right to test the Claimant because it has no probable cause to test him.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

In this case, the Claimant, who had accumulated less than five months of seniority before he signed the Rule G Waiver in October 1991, had been employed by the Carrier for two and one-half years at the time that he violated the Rule G Waiver. Given that short tenure of employment and the fact that the Claimant has been found to have cocaine in his system on two occasions, the second in violation of the Rule G Waiver in which he agreed that he could be terminated if he were found to have cocaine in his system again, this Board has no alternative other than to deny the claim.

AWARD

Claim denied.


PETER R. MEYERS
Neutral Member


Carrier Member

DATED: 10/10/94


Organization Member

DATED: 10-10-94