

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) - NORTHEAST CORRIDOR**

Case No. 205

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The dismissal of Trackman S. Graham for alleged violation of Amtrak's Standard of Excellence on July 22, 1998 was without just and sufficient cause and in violation of the Agreement (System File NEC-BMWE-SD-3882D).
2. Claimant Graham shall have her record cleared of the charge leveled against her and she shall be reinstated to service with seniority and all other rights unimpaired and she shall be compensated for all wage loss suffered.

FINDINGS:

On October 29, 1998, a hearing was held after the Claimant had tested positive for marijuana during a return-to-work physical examination which was part of a condition for reinstatement after she had been found guilty of dishonesty. The Claimant was found guilty of testing positive for marijuana metabolites and, consequently, dismissed from the Carrier's service.

The Organization took exception to the discipline and filed the instant claim on behalf of the Claimant. The Organization contended that the Claimant's due process rights were violated when the Carrier postponed the hearing for an unreasonable amount of time. The Organization also contends that the Claimant should have been offered an

opportunity to enter a drug treatment program.

The parties being unable to resolve the issue at hand, this matter now comes before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

With respect to the substantive issue, 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 when the Claimant returned to work, she failed a back-to-work drug screen test. The Claimant was returning on a conditional reinstatement as a result of an agreement between the parties relating to a previous dismissal. The Claimant showed up for the physical with marijuana metabolites in her system. That is clearly in violation of the rules.

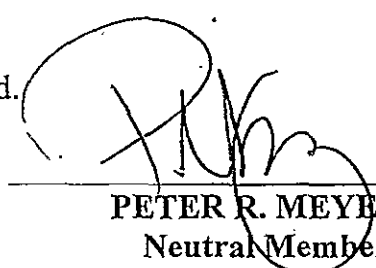
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

Given the seriousness of this wrongdoing and the fact that the Claimant was on notice that she had to pass a physical examination which included a drug test before she could return to work, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated her employment. Therefore, the claim will

be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 9/21/99



ORGANIZATION MEMBER

DATED: 9/21/99