

SPECIAL BOARD OF ADJUSTMENT NO. 1020

PARTIES ) AMTRAK SERVICE WORKERS COUNCIL  
TO )  
DISPUTE ) NATIONAL RAILROAD PASSENGER CORPORATION

STATEMENT OF CLAIM

1. Carrier, acting arbitrarily and unjustly, violated Rule 19 and other related rules of the Agreement when, on March 22, 1987 it removed from service Claimant Richard Garnett and, when on May 26, 1988 it dismissed Claimant from service.
2. Carrier shall now be required to reinstate Claimant to service with seniority rights unimpaired and to compensate him an amount equal to what he could have earned, including but not limited to daily wages, overtime and holiday pay, had he not been held from service and dismissed. Carrier shall also be required to clear Claimant's record of any reference to this matter.
3. Carrier shall also be required to reimburse Claimant for any amounts paid by him for medical, surgical or dental expenses for himself and his dependents to the extent that such payments would be payable under the current insurance carriers covering similar employees in the craft. Carrier shall also reimburse Claimant for all premium payments he may have had to make in the purchase of substitute health, dental and life insurance until his regular coverage is restored by Carrier.

OPINION OF BOARD

As a result of charges dated March 25, 1987, investigation eventually held on May 17, 1988 and by letter dated May 26, 1988, Claimant, a Chef, was dismissed from service for violating the terms of a Rule G Waiver.

On January 12, 1987 Claimant signed a Rule G Waiver admitting that on December 31, 1986 he reported for duty under the influence of an intoxicant. In pertinent part, the Waiver provided:

Additionally, I further understand that after successfully completing the initial treatment plan recommended by the EAP Counselor, I will be dismissed from service unless I comply with the following stipulations:

\* \* \*

3. Pass a complete medical examination upon completion of the initial treatment program.

4. For cases involving the use of drugs or alcohol, submit to and pass a test by urine or breath sample respectfully, each calendar quarter for a period of two years.

On March 22, 1987 Claimant was instructed to submit to a drug test. Claimant tested positive for the presence of cocaine and benzodiazepine and the instant charges followed.

Substantial evidence supports the Carrier's action in this matter. The Rule G Waiver is clear - failure to pass a drug test "will" result in dismissal. Claimant failed to pass the test in March 1987 and, under the terms of the agreement signed by Claimant, dismissal was warranted.

The record does not establish that Claimant was required to take more than one quarterly drug test as argued by the Organization. The February 19, 1987 exam relied upon by the Organization was not the quarterly test under paragraph 4 of the Waiver but, as shown by the testimony of Nurse C. Cazal, that test was part of the return to duty examination referenced in paragraph 3 of the Waiver.

Nor does Claimant's bare assertion that he substituted tap water for his urine specimen change the result. For all purposes, Claimant's testimony to that effect was not credited. Considering the objective evidence in the record showing that Claimant failed the test, we find no sufficient basis to overturn that credibility determination. SBA 951, Award No. 38 relied upon by the Organization is not applicable since in that case there was no objective evidence to warrant discrediting a witness and the witness' testimony was deemed uncontradicted. Here, that objective evidence exists through the results of the test. Further, we agree with the Carrier that even assuming that Claimant did submit tap water as he alleges, that action in and of itself in the context of this case is tantamount to failing the drug test and warranted dismissal.

Similarly, the allegations that the test documents contain sufficient errors to require setting aside the discipline is not supported. At most, the errors alluded to by the

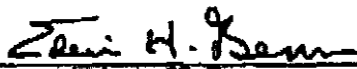
Organization are typographical date errors and do not warrant setting aside the Carrier's action.

Further, the Organization's assertion that the drug test was not confirmed is likewise not substantiated by the record. The test results in the record establish to a sufficient degree that a confirmation test was performed on the initial EMIT screen.

Finally, we have considered the procedural arguments made by the Organization and also find those assertions insufficient to change the result. In light of the clear language of the Rule G Waiver with its mandate that Claimant not fail a drug test and the evidence showing that Claimant did not comply with those terms, the issues raised concerning the conduct of the hearing are, at most, non-prejudicial. The Organization's reliance upon SBA 951, Award No. 31 is not persuasive. There, the failure to call a witness to testify about relevant and material evidence was deemed prejudicial where the record testimony was in contradiction. Here, in light of Claimant's failure to pass the drug test as required by the Rule G Wavier and the strict terms of the Rule G waiver calling for his dismissal upon such a failure, the testimony of the witnesses not called cannot be considered relevant and material to the main issue before us, and hence, the failure to adduce their testimony was non-prejudicial.

**AWARD**

Claim denied.

  
Edwin H. Benn  
Neutral Member

  
L. D. Miller  
Carrier Member

  
J. C. Campbell  
Organization Member

Chicago, Illinois  
July 6, 1989