

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

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

Case No. 166

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Mr. W. Johnson for his alleged violation of National Railroad Passenger Corporation Rules G and L was arbitrary, capricious and without just cause (System File NEC-BMWE-SD-3190D).
2. Claimant Johnson's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

On October 2, 1992, the Claimant, Warneal Johnson, a track foreman, was guiding a burro crane through the track terminal at North Philadelphia when Track Supervisor Patterson believed he smelled alcohol on the Claimant's breath. Subsequently, the supervisor took the Claimant off the job and both he and the Claimant proceeded to the station for an alcohol screening.

At the station, Engineer of Track Buechler administered a breathalyzer test to the Claimant and the results showed an alcohol level of .121% at 3:30 a.m. and an alcohol level of .100% at 3:52 a.m.

On October 9, 1992, the Claimant was advised to attend an investigation to determine his responsibility for his alleged violation of Carrier Rules of Conduct G and L. In addition, the Claimant had previously signed a Rule G Waiver on July 29, 1992,

after testing positive for cocaine and this latest incident would constitute a violation of the terms of that Rule G Waiver. The Claimant was determined guilty as charged and dismissed from service on March 2, 1993.

The Organization appealed the dismissal contending that Mr. Buechler never calibrated the breathalyzer machine before administering the test to the Claimant. Furthermore, the Organization contends that the Claimant was never "provided with any confirmation testing of another type, such as a urine screen or blood testing".

The parties not being able to resolve the issues, this matter came 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 Carrier Rules G and L on October 2, 1992. We accept the positive test results. Since the Claimant had previously signed a Rule G Waiver on July 29, 1992, this Board finds that the Carrier acted within its rights when it terminated his employment.

The record reveals that the Carrier engineer had been properly trained to administer a breathalyzer test. The machine had been calibrated only two weeks before the incident. When the Claimant's breath was tested on the two occasions it showed alcohol levels beyond acceptable limits. With respect to the Organization's argument that the Claimant should have had further testing done at a hospital or other testing facility, this Board finds that the simple procedures that are required for alcohol testing do not necessarily require a confirmation test at an independent laboratory. Breathalyzer results are deemed sufficient when an employee is charged with being at work with alcohol in

his system.

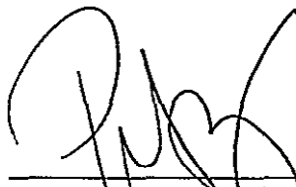
The Organization also claims that the Carrier did not provide the Claimant with sufficient care in its EAP program after the Carrier became aware of the Claimant's alcohol problems when he signed the Rule G Waiver. However, the record reveals that the Carrier did have the Claimant interviewed and then there was a recommendation for individual and group counseling twice a week. It was the Claimant who failed to report for his outpatient counseling after August 31, 1992

In summary, it was not the Carrier's fault that the Claimant showed up for work with alcohol on his breath on the two separate occasions. The Carrier made an effort to help the Claimant with his problem. The Claimant signed the Rule G Waiver. It was the Claimant who was unwilling or unable to address his alcohol problems.

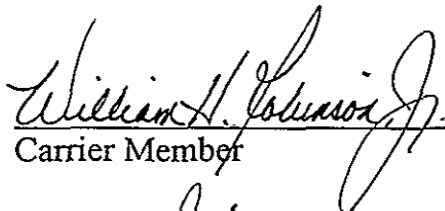
This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant. Therefore, the claim will be denied.

AWARD

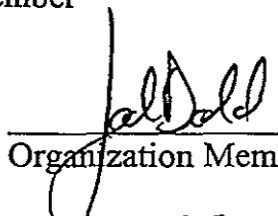
Claim denied.



PETER R. MEYERS
Neutral Member



Carrier Member
DATED: July 7, 1994



Organization Member
DATED: 7-7-94