

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

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

Case No. 169

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Trackman D. Dent for violation of NRPC Rules of Conduct Rules 'G' and 'L' on October 4, 1993 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-3287D).
2. The Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

On October 4, 1993, the Claimant submitted himself for a quarterly breathalyzer test per the terms of a Rule G Waiver signed by the Claimant in July of 1991. The test measured the Claimant's blood-alcohol level at .090 and .097. The Carrier's permissible level is .02. Consequently, the Claimant was charged with violation of Rules G and L and instructed to attend a hearing in his behalf.

At the hearing, the Organization argued that the breathalyzer test was administered after the terms of the Rule G Waiver had expired since the Claimant had signed it in July of 1991 and the test was administered in October of 1993. Since the two-year period had elapsed, the Claimant was no longer subject to quarterly drug/alcohol screens.

The Carrier argued that the two-year period had not expired because during the

time in question, the Claimant had been on two furloughs and one medical leave; "therefore, in accordance with a longstanding interpretation of the governing policy, his testing period was extended for a length of time equal to his absences in order to fulfill the conditions of his Rule G Waiver."

The Claimant was found guilty and dismissed from service per one of the Rule G Waiver stipulations.

The parties not being able to resolve the issues, this matter came before this Board.

This Board has reviewed the extensive record in this case, including the evidence and testimony, as well as the arguments made by the parties, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of a second Rule G violation in October of 1993. We also find that that Rule G violation violated the terms of his Rule G Waiver from 1991, in which he agreed to keep his system free of drugs and alcohol or face dismissal.

With respect to the Organization's argument that the two-year period had expired, this Board accepts the Carrier's position that the two-year Rule G testing period was extended for the amount of time that the Claimant was off work due to furlough or vacation. Although this Board is somewhat unimpressed by the self-serving Memorandum to Nurse Martelli-Callis from a K. A. Huss, the fact remains that it only makes sense for the Carrier to increase the two-year period in cases where the employee is not working with the Carrier for part of the time. If the two-year period were not extended, then an employee could conceivably be off for the entire two years on a leave

of absence or for some other reason of his own choice, and then return and not be subject to any of the requirements of the Rule G Waiver that he had previously executed.

Moreover, this Board is further convinced by previous awards involving this Carrier issued by other Boards, including Special Board of Adjustment No. 928, in Case No. 143, as well as Public Law Board No. 3783, Case Nos. 270 and 281, and Public Law Board No. 4788, Case No. 13. In all of those awards, the Boards have found that the two-year testing period does not begin until the employee returns to work and that the testing period is "arrested" during the months that the Claimant is not working.

It is important to note that in this case, in addition to the quarterly test results, one of the supervisors observed that the Claimant "smelled like he had been drinking" and "smelled like alcohol" on the date in question. That observation itself was enough for the Carrier to require an employee with previous alcohol problems to submit to a test.

When the Claimant was charged with the Rule G violation in July of 1991, he signed the Rule G Waiver, in which he admitted his Rule G violation and agreed that he would be subject to dismissal if he failed to live up to the terms of the Rule G Waiver.

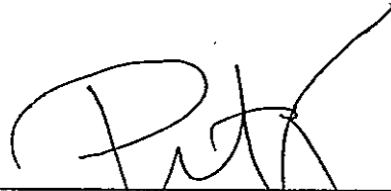
This record reveals that the Claimant is now a two-time alcohol offender and has subjected himself to the disciplinary action which he is now facing. The Claimant agreed to keep his system free of drugs and alcohol, and he has failed in that regard. It is not necessary for this Board to reiterate the reasons for keeping an alcohol and drug-free workplace at this Carrier.

This Board cannot find that the Carrier acted unreasonably, arbitrarily, or

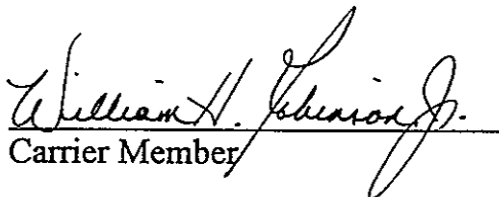
capriciously when it terminated the Claimant for this second alcohol offense. Therefore, the claim will be denied.

AWARD

Claim denied.

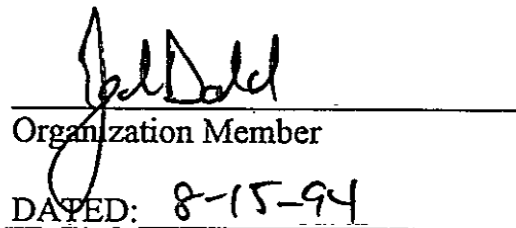


PETER R. MEYERS
Neutral Member



Carrier Member

DATED: August 15, 1994



Organization Member

DATED: 8-15-94