

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

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

Case No. 171

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Mr. J. Watson for his alleged violation of NRPC Rules of Conduct Rules 'D', 'G', and 'L' was arbitrary, capricious, and without just cause (System File NEC-BMWE-SD-3293D).
2. Claimant Watson's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

On October 28, 1993, the Claimant, J. Watson, underwent a breathalyzer test as part of his agreement with the Carrier resulting from a previous dismissal for a Rule G violation. The Claimant's blood alcohol level results were .069 and .062 which exceeded the Carrier's allowable level of .02.

An investigation was held on November 22, 1993 and it was determined that the Claimant was guilty of violating Carrier Rules D, G, and L. In addition, since the Claimant tested positive during his follow-up alcohol screen, the Carrier determined that dismissal was automatic pursuant to the Claimant's reinstatement agreement and he was subsequently terminated.

The Organization filed a claim on behalf of the Claimant arguing that the nurse who administered the breathalyzer test did not calibrate the machine beforehand, that the

Claimant did not show any physical signs of being under the influence of alcohol, and that when the Claimant had himself re-tested by the nurse at the facility where the Claimant was stationed, the result was .000. Based on these arguments, the Organization contends that the Carrier did not meet its burden of proof and the Claimant should be reinstated.

The Carrier argued that the Alco-Sensor was properly tested before the test was administered, that physical appearance "is not probative evidence" of being under the influence of alcohol, and that three hours had elapsed between the Carrier breathalyzer test and the Claimant's own re-test.

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 having alcohol in his system while at work on October 28, 1993. This Board further finds that there is no evidence that the employees who performed the test and the machine on which the test was performed were not functioning properly. The record is clear that the Claimant was tested twice and came up positive both times.

The Claimant had signed a Rule G Waiver after being dismissed once before due to a Rule G violation. That Rule G Waiver included a provision that stated, "Any employee with a confirmed positive result on a followup drug and/or alcohol test will be subject to dismissal." The Claimant tested positive on this occasion and was, therefore,

properly dismissed.

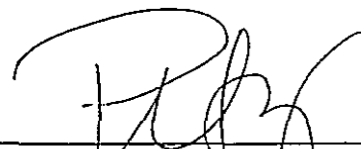
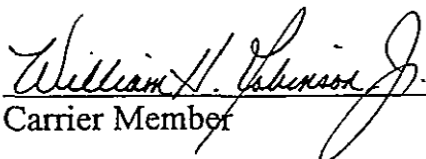
With respect to the Claimant's statement that he had been tested subsequently and that test showed that he had no alcohol in his system, this Board finds that by the time that that test was taken, the alcohol could have easily dissipated in his body. Consequently, that negative test does not detract from the two previous positive tests which occurred on Carrier premises when the test was administered by the Amtrak Occupational Health Nurse.

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.

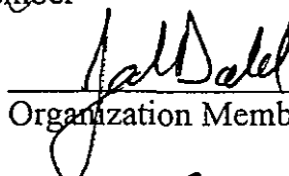
This Board has held on numerous occasions in the past that if a claimant is found guilty of a second Rule G violation while he is still serving under a Rule G Waiver, the Carrier has a legitimate basis upon which to finally dismiss the employee. That was the case in this matter, and we find that the Carrier acted properly. 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