

NATIONAL MEDIATION BOARD
WASHINGTON, DC

SPECIAL BOARD OF ADJUSTMENT 986

NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) – NORTHEAST CONFERENCE (“CARRIER”)

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DIVISION – IBT RAIL CONFERENCE

NMB Case No. 284
Employee: David Wilson

Neutral Member: Barbara Zausner
Carrier Member: Richard Palmer
Organization Member: Jed Dodd

STATEMENT OF CLAIM

- 1- The dismissal of Mr. David Wilson under date of July 13, 2009 for an alleged violation of Amtrak’s Standards of Excellence Policy entitled Professional and Personal Conduct (Teamwork), Amtrak’s Standards of Excellence Policy entitled Alcohol and Drugs, and an alleged violation of Amtrak Drug and Alcohol Policy in connection with a drug and alcohol testing event as part of a periodic physical examination on Thursday, May 14, 2009 was arbitrary, capricious, unwarranted and in violation of the Agreement.
- 2- Because of the Carrier’s violation cited in Part I above, the Claimant Wilson shall have the dismissal from service removed from his record and shall be reinstated to service with seniority and all other rights unimpaired, and be made whole for any and all loss suffered.

FINDINGS

Upon the whole record and on the evidence, the Board finds that the parties herein are Carrier and Employer within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Claimant, David Wilson, was a Track Foreman/Inspector in Boston MA. He is charged with failing to complete a Company Periodic Drug and Alcohol Testing Event on May 14, 2009. He was dismissed by letter dated July 13, 2009.

On May 14, 2009, the Claimant was unable to provide the required amount of urine for a test. He was considered a "Shy Bladder" under the Carrier's Alcohol and Drug Policy. He was offered and drank water over a three hour period of time but was not able to provide an adequate sample. He was referred for a medical exam. There was no evidence of a medical condition that precluded the Claimant from providing the sample. Therefore, he was considered a refusal to test. The Carrier notes that no evidence of a medical explanation for the failure to test has been presented.

The Organization points to the grievant's thirty-three years of service. It argues that the Claimant did not have a proper medical evaluation after he failed to provide an adequate urine sample. The Organization cites Amtrak's Alcohol and Drug Policy Guidelines (Section:

Terms) which sets forth the requirement for medical evaluation in “shy bladder” cases.

The Organization disputes the Carrier’s claim that Federal Regulations required the test be labeled as a refusal. The test was performed under the Carrier’s policy and the Claimant is not a DOT employee.

A majority of the Board concludes that the Claimant should be offered reinstatement without back pay, on condition that he pass a drug and alcohol test and other testing that may reasonably be required, that he report to the EAP and comply with the Program’s suggestions. He will be subject to random testing for the customary period. This decision is based largely on the Claimant’s long seniority with no other discipline in his record other than a three day suspension in 2000 for failing to follow a supervisor’s instructions. During his long tenure he routinely complied with testing requirements and has not had any prior positive results or failures to test. It is possible that closer medical scrutiny might have found a medical explanation for his failure to provide an adequate sample.

AWARD

The Claim is sustained in part and denied in part. Claimant shall be returned to service without back pay but with seniority and all other benefits intact. on condition that he pass a drug and alcohol test and other testing that may reasonably be required, that he report to the EAP and comply with the Program's suggestions. He will be subject to random testing for the customary period.



Barbara Zausner, Neutral Board Member
May 27, 2010

 6/8/10

For the Carrier
Richard F. Palmer, Director – Labor Relations

 6/8/10

For the Organization
Jed Dodd, General Chairman