

NATIONAL MEDIATION BOARD
WASHINGTON, DC

SPECIAL BOARD OF ADJUSTMENT 986

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

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

NMB Case No. 293
Employee: James Pennington

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

STATEMENT OF CLAIM

1- The dismissal of Claimant J. Pennington, III for the alleged violation(s) of Amtrak’s Standards of Excellence, Alcohol and Drugs, Professional and Personal Conduct and Attending to Duties as well as Amtrak Drug and Alcohol Policy (P/I 7.3.0), Instruction 4.2.1 (Prohibition 6 and/or Prohibition 7) in Instruction 4.2.2 for allegedly acting in an insubordinate manner by providing a false urine specimen and/or refusing to submit a proper urine sample as directed during the March 2, 2011 FRA/DOT Random Drug Test is improper, unproven, unwarranted and in violation of the Agreement (System File NEC-BMWE-SD-4950D).

2- As a consequence of the violation referred to in Part 1 above, Claimant shall receive [sic] be reinstated and receive the remedy prescribed in Rule 15, Paragraph 6 of the Agreement.

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 in this case, James Pennington, was assigned as a B & B Mechanic. On March 2, 2011 Mr. Pennington was required to submit to Drug and Alcohol testing as part of a Federal Random Drug Testing Event. The urine sample provided by the Claimant was tested and found to be inconsistent with normal human urine as defined by the Department of Transportation. This was confirmed in split sample testing.

The Claimant was notified by letter dated March 18, 2011 to appear for an investigation into his alleged violation of Amtrak's Standards of Excellence governing Alcohol and Drugs, Professional and Personal Conduct (Teamwork) and Attending to Duties; and violation of Amtrak's Drug and Alcohol Policy (P/I 7.3), Instruction 4.2.1 (Prohibition 6 and/or Prohibition 7) and Instruction 4.2.2. Based on the evidence presented at the investigation, the Claimant was found guilty of the

charges and was assessed the discipline of dismissal effective May 31, 2011.

On March 2, 2011, the Claimant reported to Amtrak's Penn Coach Yard in Philadelphia, PA to submit to Drug and Alcohol testing. The Claimant certified on the Federal Drug Testing Custody and Control Form the following:

"That I provided my urine specimen to the collector; that I have not adulterated it in any manner; each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen is correct".

The record confirms that the Claimant and the Organization had an opportunity to question drug testing personnel. His actions constitute a refusal to test under Amtrak's Alcohol and Drug Policy guidelines. The Carrier is not obliged to prove what the specimen was; it is sufficient to prove that it was inconsistent with human urine. Any errors by the testing lab were clerical errors that were subsequently corrected. There was no chain of custody error. There is no evidence that the specimen was replaced or tampered with. The collection was performed "unobserved" so that it was not impossible to adulterate the sample. The Claimant requested and was granted an independent test on the split sample. The second test confirmed the first.

The evidence also confirms that the Claimant, who operated a CDL vehicle during December 2010 and was, therefore, properly subject to testing. Employees remain in the pool even if their licenses have been suspended. No specific provision is cited that would render the Claimant's random drug test inappropriate.

In response to Claimant's request, the Carrier provided information on random drug testing. The burden of proving an affirmative defense is on the Claimant.

We agree with the Carrier that there are no mitigating circumstances in this case. Numerous cases support the Carrier's claim that termination is the appropriate penalty in cases involving substituted urine specimens that do not have the characteristics of human urine.

AWARD


The Claim is denied.



Barbara Zausner, Neutral Board Member
January 30, 2012

 2/3/2012

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

 2/3/12

For the Organization
Jed Dodd, General Chairman