

Special Board of Adjustment 928

Award no. 490

Parties to the Dispute:

Brotherhood of Locomotive Engineers and Trainmen

and

National Railroad Passenger Corporation (AMTRAK)

(Ronald Wagner – Claimant)

Statement of Claim:

Claim presented on behalf of the Brotherhood of Locomotive Engineers and Trainmen on behalf of BLE&T Local Chairman and Passenger Engineer Ronald Wagner for rescinding the imposed discipline of: "termination of your employment with the National Railroad Passenger Corporation effective immediately" as stated in the attachment to the decision letter, dated September 11, 2006, under the signature of General Superintendent – Central Division Don Saunders and with full compensation for time lost, full credit toward vacation entitlement, full entitlement for health and welfare credits during the period held out of service, and clearing of Claimant's record as to any record relative to the alleged violation.

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Special Board of Adjustment 928 has jurisdiction over the parties and the dispute involved herein.

At the time of the incident that led to the suspension in this matter, Claimant was an Engineer and had been employed by the Carrier for approximately 20 years.

A review of the record shows that the following facts are not in dispute. Claimant was administered a drug test on June 30, 2006. This drug test was pursuant to the follow-up testing requirements of Claimant's Rule G Waiver executed on March 26, 2004. Claimant tested positive for cocaine.

On July 12, 2006, Claimant was sent a notice to attend an investigation on in connection with charges related to the above positive drug test. On August 2, 2006, Claimant was sent a notice that the investigation would be consolidated with a

Revocation of Certification hearing. The hearing was twice postponed and was held on September 1, 2006. The Carrier notified Claimant in a letter dated September 8, 2006, that he was guilty of the presented charges. On September 11, 2006, Claimant was dismissed from service with the Carrier.

The Organization argues that the time frame for follow-up testing lapsed prior to the test in the instant matter and that the notice of the consolidated hearing was procedurally defective.

The Carrier counters that Claimant was afforded a fair and impartial hearing and that there are no procedural defects. Claimant's follow-up testing period was extended because of Claimant's two month leave of absence. The instant test occurred within the two year period of active service. Further, the consolidation of the FRA certification hearing does not render untimely the underlying notice of investigation.

As to the merits of the instant matter, the Carrier points out that Claimant committed the infractions by testing positive for marijuana metabolites. Claimant had previously executed an Alcohol and Drug Waiver Agreement. Under the provisions of that Agreement, a subsequent positive test for a prohibited substance automatically results in a dismissal. According to the Carrier, the executed Waiver Agreement makes the instant inquiry a *fait accompli* and this Board is left with little to do but deny the claim.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

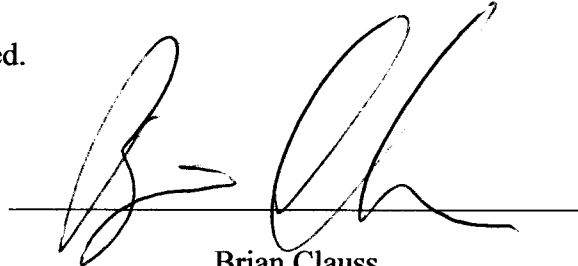
After a review of the record, the Board finds that there were no procedural defects which void the discipline. Claimant's follow-up period was properly extended for the period of time that he was on a leave of absence. The notice of consolidation of the Revocation of Certification hearing did not affect the underlying notice of investigation. There was substantial evidence of the positive drug test in the record to sustain the charges.

The inquiry before this Board next turns to the imposed discipline. Claimant signed a Waiver Agreement. Under that Waiver Agreement, a subsequent positive test would result in dismissal. There is nothing in the record that shows the Carrier to be acting unreasonably, arbitrarily or capriciously by enforcing that Waiver Agreement and

dismissing the Claimant. The imposed discipline did not constitute an abuse of the Carrier's discretion.

Award:

Claim is denied.

A handwritten signature in black ink, appearing to read 'B. Clauss', is written over a horizontal line.

Brian Clauss
Chairman and Neutral Member

Mark B. Kenny
General Chairman
BLET
Organization Member

Larry C. Hriczak
Director, Labor Relations
AMTRAK
Carrier Member

Dated this _____ day of _____ 2008