



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 129
April 28, 1989

MANDATORY DRUG TESTING

References:

Samuel K. Skinner, Secretary
of Transportation

v.

Railway Labor Executives' Assn.

National Treasury Employees Union
v.

William Von Raab, Commissioner,
United States Customs Service

Ludtke v. Nabors Drilling

United States Supreme Court
57 USLW 4324 (No. 87-1555)
March 21, 1989

United States Supreme Court
57 USLW 4338 (No. 86-1879)
March 21, 1989

Alaska Supreme Court
Opinion No. 3413
P.2d
February 17, 1989

FACTS:

These three cases concern mandatory drug testing as a condition of employment. Two of the cases--U.S. Customs Service and Railway Labor--involve warrantless seizures by the government and the Nabors Drilling case involves mandatory random testing by private industry.

The Federal Railroad Administration (FRA), responding to a number of drug and alcohol related accidents, promulgated a regulation which requires railroads to see that blood and urine tests of covered employees are conducted following certain major train accidents or incidents. Another part of the same regulation allows for the testing of covered employees who violate certain safety rules. The Railway Labor Association brought suit in federal court alleging Fourth Amendment violations.

The U.S. Customs Service implemented a drug-screening program requiring urinalysis tests from employees seeking transfer or promotion to positions having a direct involvement in drug interdiction or requiring the incumbent to carry firearms or to handle "classified" material. The regulation prohibits the results from being turned over to any other agency, including criminal prosecutors, without the employee's written consent. The Treasury Employees Union brought suit against the government and claimed Fourth Amendment violations.

Nabors Drilling, an Alaskan private employer, established a drug-testing program for its employees. Two employees who worked on drilling rigs on the North Slope were terminated for refusing to submit to the screening test. The employees, two brothers, brought suit alleging their privacy rights were violated under Alaska's Constitution.

The above is only a brief statement of the facts; these three cases should be read in their entirety for complete details.

ISSUE NO. 1:

Do government (FRA and U.S. Customs) regulations requiring mandatory drug/alcohol screening of certain employees violate the Fourth Amendment?

HELD: No.

ISSUE NO. 2:

Does a private employer violate privacy rights of certain employees by requiring them to submit to drug/alcohol screening?

HELD: No.

REASONING:

1. The drug and alcohol tests mandated or authorized by the FRA are reasonable under the Fourth Amendment, even though there is no requirement for a warrant nor reasonable suspicion that any particular employee may be impaired, since the compelling governmental interests served by the regulations outweigh privacy concerns.
2. Railroad employees engaged in safety-sensitive tasks, involving the traveling public and employees themselves, justifies prohibiting such employees from using drugs or alcohol while on duty or on-call for duty. Imposing a warrant requirement in this context is not essential to render the intrusions (seizure of blood, urine or breath) reasonable.
3. The U. S. Customs' testing program is not designed to serve the ordinary needs of law enforcement (tests cannot be used in criminal prosecution without employee's written consent). The purpose of the program is to deter drug use among those eligible for promotion to sensitive positions. The public interest in the program must be balanced against the individual's privacy concerns implicated by the tests to determine whether a warrant, probable cause or some level of individualized suspicion is required in this particular context. A warrant is not required.

4. The right to privacy under the Alaska Constitution--Nabors-- does not extend to the actions of private parties.

5. There exists a public policy on employees' conduct into which employers may not intrude. This public policy must be balanced against the public policy supporting health and safety.

6. Nabors: (a) The drug test must be conducted at a time reasonably contemporaneous with the employee's work time; (b) the employer's interest is not in the broader police function of discovering and controlling the use of illicit drugs in our general society; (c) an employee must receive notice of the adoption of a drug-testing program.

NOTES:

These three cases indicate that the courts will uphold drug-testing programs, including random testing in the Nabors case, for those employees engaged in safety-sensitive positions. What remains to be decided is what other jobs are safety-sensitive; for instance, how about armed police officers, pilots, firemen and tanker crew members?

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

Add this case to Section Q on Page 14 of your Contents and to Section Q-2 of Text. File Legal Bulletin No. 129 numerically under Section R of the manual.