

PUBLIC LAW BOARD NO. 1760

Award No. 100

Case No. 100

File MW-STL-84-11

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement

of Claim: Claim on behalf of J. T. Kelly requesting reinstatement and pay for time lost as a result of his dismissal for failure to comply with the instructions of Carrier's Medical Director and Company Policy.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board.

Claimant, on April 1985, underwent a return to work physical examination which included a drug screen urinalysis. The test results there were positive for marijuana. Carrier's Medical Director informed Claimant in an April 12, 1985 letter, that he must rid his system of prohibitive drugs in order to be returned to service. Claimant complied with the medical instructions and was returned to service by letter June 6. He was advised on January 16, 1986 from Dr. Ford that he would be subject to periodic retest for a period of three years and that a discovery of a prohibitive drug in his system would result in his dismissal.

Claimant on February 27, 1987 underwent another return to work physical examination and was required to submit to a further drug test. The Claimant again tested positive for marijuana on both the Enzyme Immuno Assay (EMIT) screening test as well as the more sophisticated Gas Chromatography/Mass Spectrometry (GC/MS) test.

Claimant was notified to attend a formal investigation which was postponed three times and finally held on May 6, 1987. As a result thereof, Carrier concluded Claimant to be guilty. He was dismissed from service as discipline therefor.

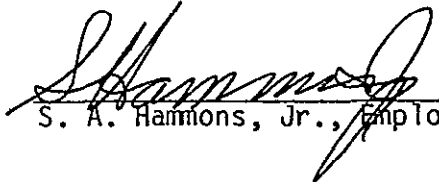
Claimant was accorded the due process to which entitled under his discipline rule.


There was sufficient evidence adduced to support Carrier's conclusion that he was culpable. His allegations that he is a victim of false positive results caused by his use of penicillin and durices must fall. The Board concludes that argument to have no merit because of the

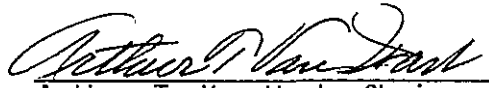
quality of the tests employed which have been referred to in previous awards of our Board. The Carrier's medical drug policy has been judged to be reasonable and the tests sophisticated and reliable. We find nothing in this record to be a basis for setting Carrier's decision aside on the grounds of the Carrier's test was false positive.

In the circumstances, this claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


L. F. Miller, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued August 30, 1989.