

PUBLIC LAW BOARD NO. 1760

Award No. 103

Case No. 103

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

Statement

of Claim: Claim on behalf of Q. D. Byrd requesting reinstatement with all rights unimpaired and with pay for all time lost as a result of his dismissal following an August 5, 1988 investigation in which he was charged with failure to comply with the instructions of the Carrier's Medical Director in that claimant did not keep his system free and clean of prohibited drugs in accordance with Dr. Ford's letter of June 5, 1987 and the Carrier Policy concerning drugs.

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

The Carrier placed all its employees on notice, February 12, 1985, that all Company physical examinations would include a drug screen urinalysis and that its medical policy forbade employment of those who used drugs.

On August 1, 1985 that policy was modified. An employee testing positive for drugs was required to produce a negative sample within 45 days and then is required to undergo retests for three years after return to duty.

That policy was tested in court and it was upheld.

In the instant case a drug screen was performed May 21, 1987. It tested positive. Subsequently, another test tested negative. Claimant was given the 3 year letter, June 5, 1987.

Claimant had a drug screen on June 28, 1988. It tested positive for morphine. He was removed from service. A formal investigation was held on August 5, 1988 on charges found in the Statement of Claim. He was found guilty. Claimant was dismissed from service August 23, 1988.

Claimant was accorded the due process to which entitled under Rule 30. The withholding of an employee from service for drug use is deemed not a "minor" offense.

There was sufficient evidence adduced to support Carrier's conclusion.

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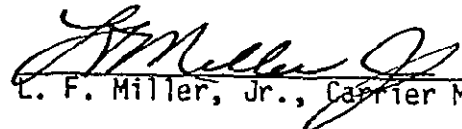
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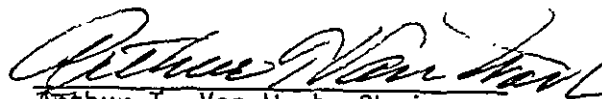
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The discipline was consistent with the publicized medical policy. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


L. F. Miller, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued October 12, 1989.