

PUBLIC LAW BOARD NO. 1760

Award No. 104

Case No. 104

Parties Brotherhood of Maintenance of Way Employees

to and  
Dispute Norfolk & Western Railway

Statement

of Claim: Claim on behalf of D. J. Trick requesting reinstatement with all rights unimpaired and with pay for all time lost as a result of his dismissal following an August 4, 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 January 24, 1988 and the Carrier Policy concerning drugs.

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

Claimant's drug screen urinalysis test performed as part of return to service physical on April 2, 1985 tested positive for marijuana. He provided a negative sample in July 1985 and returned to work but was subject to the Carrier policy of 3 years of re-testing. Claimant was retested July 13, 1978 and advised on July 22 that he again tested positive for marijuana.

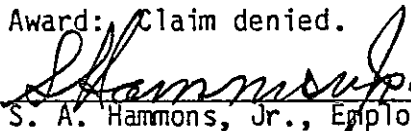
A formal investigation was held August 4, 1988. The Claimant was dismissed August 15, 1988.

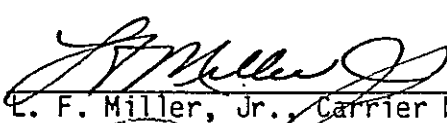
Rule 30 was complied with. Withholding a drug user is not a violation of the "minor" restriction."


The record is clear. Claimant was on notice as to drug use. He tested positive. The testing methodology used was above testing reproach. As the BMWE Journal pointed out, in part: "the most reliable urine test is the GC/MS."

The discipline was consistent with the published 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