

PUBLIC LAW BOARD NO. 1760

Award No. 108

Docket No. 108

N&W File MW-MOB-88-17

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company
(Former Wabash)

Statement

of Claim: Claim on behalf of C. M. Adams requesting reinstatement with all rights unimpaired and with pay for all time lost as a result of his dismissal following a September 16, 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 clear of prohibited drugs in accordance with the Carrier Policy concerning drugs.

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

Claimant, following a formal investigation, held on September 16, 1988, in absentia because of his failure to appeal thereat was adjudged guilty of the charge stated in the Statement of Claim. He was dismissed as discipline therefor.

The transcript reflects that Claimant returned to service in July 1987. He took a return to work physical examination on July 9th which included a drug screen. The drug screen analysis registered positive for marijuana (THC). Dr. Ford's July 22, 1987 letter advised Claimant of the results and also that he had 45 days in which to provide a negative sample or enter the DARS program.

Claimant entered the DARS program on August 16, 1987. He successfully completed that program. Claimant was instructed to keep his system free of drugs and that future drug testing would be required for three years. He was satisfactorily released from the program on October 12, 1987 but his seniority did not permit him to hold any job at that time.

Claimant was recalled to service in June 1988. He took his work physical examination on June 8, 1988. However, Claimant was injured in an off duty accident in July and was off medically. When he returned he took a Company physical examination (drug screen). It was performed July 29, 1985 and again tested positive for marijuana (THC).

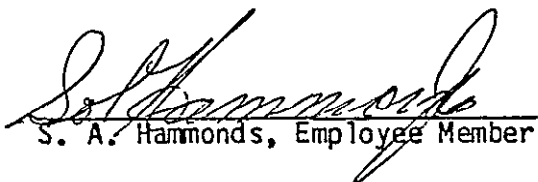
Claimant was accorded the due process to which entitled under his discipline rule. That he was removed from service pending an investigation was not in violation of Rule 30. Nor can holding the investigation in his absence be considered as violative of Rule 30. The investigation is Claimant's assurance that Rule 12, negotiated by the organization, required that he get a fair hearing before discipline could be imposed by the Carrier. That he chose to waive attendance thereat was his own choice. However, he is bound by the evidence adduced thereat. Claimant's absence therefrom, without good cause, is at his own peril.

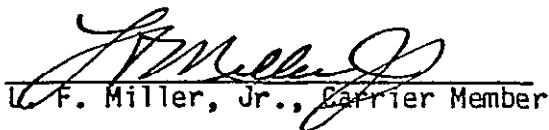
Carrier drug policy has been well tested. In RELA Norfolk and Western Railway Company, No. 86 C 2094, the U.S. District Court of Eastern Illinois, found that the drug testing component of Norfolk Southern's Medical Policy was a proper exercise of managerial prerogative.

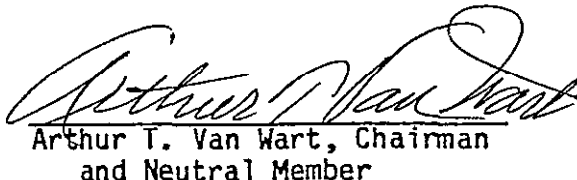
Our Board has generally upheld the Carrier's drug policy in circumstances, as here, where the employee has failed to comply with Carrier's drug policy to keep his system clear of prohibitive drugs.

The dismissal is not considered unreasonable because it was the Claimant's second violation of the Carrier's drug policy and he was aware that it would result in dismissal. This claim will be denied.

Award: Claim denied.


S. A. Hammonds, Employee Member


L. F. Miller, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued February 23, 1990.