

PUBLIC LAW BOARD NO. 1760

Award No. 96

Case No. 96

File MW-FTW-86-26

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

Statement

of Claim: Claim on behalf of J. Taylor requesting that he be reinstated with pay for time lost as a result of his dismissal for failure to comply with instructions of Carrier Medical Director and Company Policy.

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

The Claimant was recalled from a furlough. He underwent a routine return to work physical examination which included a urinalysis drug screen on February 12, 1986. The urine sample provided by Claimant on February 12, tested positive for THC (marijuana). A confirmation test (GC/MS) showed 192 NG/ML which confirmed the initial positive reading.

Carrier's Medical Director, Dr. Ford, wrote Claimant instructing him to provide a negative sample within 45 days and that failure to do so would subject him to dismissal. Claimant failed to provide a negative sample as instructed.

Claimant was required to then attend a formal investigation on the charges of failure to comply with Carrier Medical Director's instructions to provide a negative sample and he did not enter the Carrier's DARS Program.

As a result of the investigation held on July 1, 1986 Carrier concluded that Claimant was culpable of the charge particularly on his assertion that he had not provided the negative sample as required. Claimant was dismissed from service as discipline therefor.

The record reflects that the chain of custody on the urine sample taken on February 12, 1986 was not broken, that the two screening tests, the Enzymes, Immuno Assay method, and the Gas Chromatography/Mass Spectrometry (GC/MS), used to confirm the results are extremely reliable. In fact, 100% reliable as a Mayo Clinic study stated:

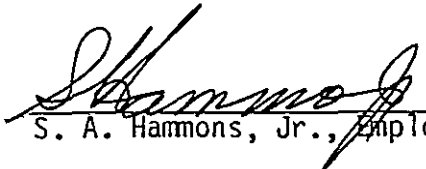
"If a positive test result will put the patient in considerable jeopardy and the screening result is the only


evidence of drug use, confirmatory testing is imperative. Of the confirmatory tests, GC/MS seems to have the specificity necessary to provide a high level of confidence in the results. A combination of EMIT procedure with the sensitivity level of 20 ng/ml and GC/MS confirmation yields virtually 100% in detection of marijuana abuse."

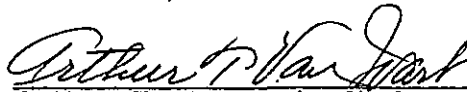
Further, the organization's own BMWE Journal in May 1987 confirmed that the latter was the most reliable urine test.

Claimant's answer that he "forgot" because of personal matters to request a retest and other arguments appear to affect Claimant's credibility. 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.