

PUBLIC LAW BOARD NO. 1760

Award No. 97

Case No. 97  
File MW-MOB-85-39

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

Statement

of Claim: Claim on behalf of M. J. Fisk 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, returned from furlough and on June 26, 1985, underwent a return to work physical examination including a drug screen urinalysis. He was notified by Dr. Ford, the Company's Medical Director, on July 18, 1985 that he had tested positive for marijuana. The Claimant was given the warning and notice that he must supply a negative sample within 45 days before he could return to service. He was informed by letter, dated August 29, 1985, that he had not yet provided a negative sample, that Claimant would have 45 days from that date to do so and that failure to do so would result in dismissal. The 45 day time limit expired on October 14, 1985 without Claimant presenting a negative sample or entering the DARS program.


Consequently, the Claimant was notified to attend a formal investigation on November 8, 1985. It was postponed and finally held on March 21, 1986. As a result thereof, Carrier concluded that Claimant was guilty as charged. 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, including Claimant's admissions, to support Carrier's conclusion that he had failed to provide a negative urine sample within 45 days and that he did not enter the Carrier's DARS Program in the interim.

The discipline imposed was reasonable and consistent with similar handling of similar matters in the past. 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.