

PUBLIC LAW BOARD NO. 1760

Award No. 98

Case No. 98

File MW-MOB-86-21

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

Statement

of Claim: Claim on behalf of M. C. Lampkin for 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 to work on August 3, 1987 after an illness. He underwent a routine return to work physical examination which included a urinalysis drug screen. The urine sample tested positive for THC (marijuana). A confirmation GC/MS test showed 356 MG/ML which affirmed the positive reading.

Claimant received a letter, dated August 11, 1986 from Carrier's Medical Director informing him that he was not permitted to return to service because of his positive testing, that he had to rid his system of marijuana and other prohibitive drugs and present a negative urine sample within 45 days of the date of said letter or be subject to dismissal. The Claimant was also advised that if he had a physical dependency on marijuana, or other drugs, that he could seek help from the DARS counselor or enter the DARS Program. The letter was sent Certified Return Receipt Requested.

It was received. However, Claimant failed to provide a negative sample within 45 days and he did not enroll in the DARS Program.

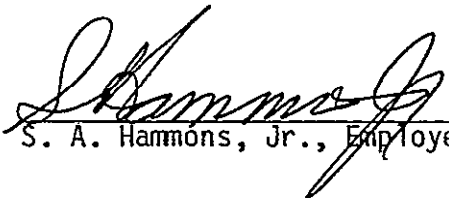
Claimant was sent a notice to attend a formal investigation in the connection with the incident. He failed to appear at the October 19, 1987 investigation. Attempts were made to try to contact Claimant by telephone but it was no longer a working number. The Union Representative did not know of his whereabouts and he had not received a request for postponement. Thus the investigation was held in absentia. As a result thereof, Carrier concluded Claimant to be guilty of the charge. He was dismissed from service as discipline.


The Claimant was accorded the due process to which entitled under his discipline rule.


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

The discipline imposed was consistent and uniformly applied along with the Carrier's drug program. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


L. E. Miller, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued August 30, 1989.