

PUBLIC LAW BOARD NO. 1837

Award No. 113

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NORFOLK AND WESTERN RAILWAY COMPANY

Statement of Claim:

1. The dismissal of Laborer J. M. Enriquez for alleged failure to comply with instructions of Carrier's Medical Director and Company Policy by failing to cooperate with the rehabilitation required by DARS was without just and sufficient cause, based on unproven charges and in violation of the Agreement (Carrier's File MW-FTW-97-37).
2. Claimant J. M. Enriquez shall now be reinstated to service with seniority, vacation, and all other rights unimpaired and compensated for all wage loss suffered since June 5, 1997 and continuing until he is reinstated.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

AWARD

After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claims should be disposed of as follows:


This Board finds that the Carrier has proven with sufficient evidence that the Claimant was guilty of failing to follow company policy and failing to cooperate with the rehabilitation required by the DARS Program. Claimant failed to participate in the programs and ignored the efforts of his counselor to contact him for further evaluation and treatment. Hence, this Board has no trouble finding that the Claimant failed to cooperate with the rehabilitation program required by DARS.

Once this Board has determined that there is sufficient evidence to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

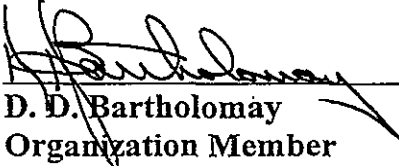
Given the serious wrongdoing on the part of the Claimant, this Board cannot find that the dismissal issued by the Carrier was unreasonable, arbitrary or capricious. Therefore, the claim will be denied.

AWARD:


Claim denied.



PETER R. MEYERS
Neutral Member



D. D. Bartholomay
Organization Member



E. N. Jacobs, Jr.
Carrier Member

Issued at Chicago, Illinois on June 29, 1998