

**BEFORE PUBLIC LAW BOARD NO. 1837**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**NORFOLK AND WESTERN RAILWAY COMPANY**

**Award No. 82**

**STATEMENT OF CLAIM:** Claim of the Brotherhood that:

Claim on behalf of W. Scott, Jr. requesting that he be reinstated and paid for time lost, as a result of his dismissal from service following investigation held on February 21, 1992, in connection with failure to comply with instructions of Carrier's Medical Director and Company policy by failing to cooperate with the rehabilitation program required by DARS.

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.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant tested positive for cocaine in October of 1990. He was subsequently placed on the Carrier DARS Program. That program requires that an employee cooperate with the rehabilitation program set forth by DARS. If the employee does not cooperate, he will be subject to dismissal.

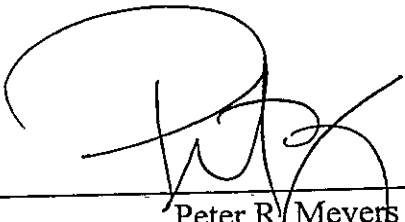
This Board finds that there is sufficient evidence in the record that the Claimant did not cooperate with the DARS Program in that he failed to keep his system free of unlawful substances. He was given a drug screen on April 3, 1991, and that tested positive for cocaine. He was returned to in-patient treatment after that but again tested positive in November of 1991. Consequently, he completed two cycles of in-patient treatment and aftercare and still was unable to keep his system free of unlawful substances.

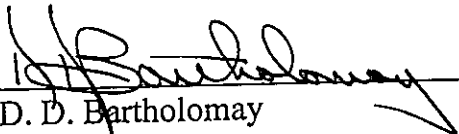
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary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

This Board has held on numerous previous occasions, as have other Boards involving these same parties, that if an employee fails to cooperate with a DARS program and continues to turn up positive for illegal substances, he may be discharged. This Board sees no reason in this case to set aside that long-standing policy. Therefore, the claim will be denied.

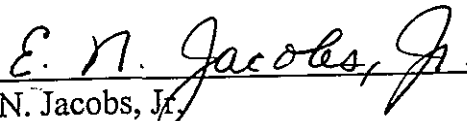
AWARD

Claim denied.

  
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Peter R. Meyers  
Neutral Member

  
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D. D. Bartholomay  
Organization Member

DATED: 1-3-95

  
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E. N. Jacobs, Jr.  
Carrier Member

DATED: December 21, 1994