

BEFORE PUBLIC LAW BOARD NO. 1837
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
AND
NORFOLK AND WESTERN RAILWAY COMPANY
Award No. 86

STATEMENT OF CLAIM: Claim of the Brotherhood that:

Claim on behalf of F. R. Hollins requesting that he be reinstated and paid for time lost, as a result of his dismissal from service following investigation held on December 15, 1992, in connection with his failure to comply with instructions of Carrier's Medical Director and Company policy by failing to keep his system free of prohibited drugs.

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 was guilty of failing to live up to the terms of the Carrier's DARS Program. The record reveals that the Claimant was found positive for cocaine in June of 1981 and subsequently was placed in the DARS Program. He completed the steps necessary for a return to

service and in July of 1992 was notified that any future positive drug screen result would subject him to dismissal. In October of 1992, he submitted a specimen that was positive for cocaine.

The Carrier policy states the following:

An employee who tests positive and then complies with the above requirements will be returned to service. The employee will be advised in writing, however, that the use of prohibited drugs is contrary to Company policy. The employee will be instructed by the Medical Director to keep his or her system free of such drugs. That employee will be subject to dismissal if any future test is positive.

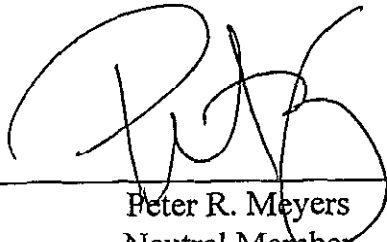
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary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

Given the Carrier rule on the subject, and the fact that the Claimant was properly advised that if he were found to be positive for illegal drugs after returning to service, he would be subject to discharge, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated him. There have been numerous awards on this Board and others which have held that employees who fail to keep their systems free of prohibited drugs in accordance with the Carrier's DARS policy after incurring an initial positive test and successfully returning to work can be properly discharged. See PLB3530, Awards No. 81, 87, 88, 97, 106, 107, and 113. See also PLB1760 Awards No.

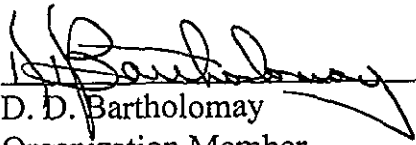
85, 89, and 100. We see no reason to deviate from that policy here.

AWARD

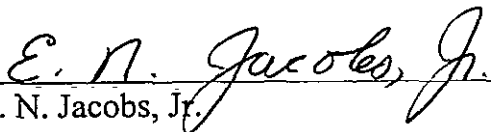
Claim denied.



Peter R. Meyers
Neutral Member



D. D. Bartholomay
Organization Member



E. N. Jacobs, Jr.
Carrier Member

DATED: 1-3-95

DATED: December 21, 1994