

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

**Award No. 87**

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

Claim on behalf of J. E. Wagers 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 not keeping 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 to support the finding that the Claimant failed to comply with the Carrier's policy and instructions relating to drug rehabilitation. The record reveals that the Claimant had provided a positive drug screen and was found to be addicted by the DARS counselor. The Claimant was instructed to report to DARS and cooperate with its rehabilitation program. He did not. The Claimant was sent a letter on November 24,

1992, informing him that an employee who fails to cooperate with DARS rehabilitation will be subject to dismissal. That letter was based on the Carrier's rule which states:

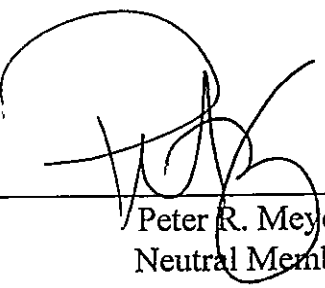
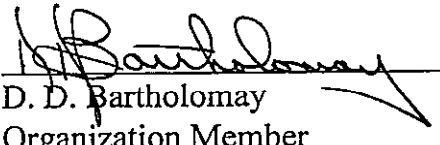

An employee who fails to timely contact DARS or to cooperate with any rehabilitation required by DARS will be subject to dismissal for failing to comply with Company Policy.

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.

Since the Claimant was found guilty of failing to cooperate with the drug rehabilitation program, this Board cannot find that the Carrier's action was unreasonable, arbitrary, or capricious. This Carrier does not automatically terminate those with drug problems. It counsels and attempts to rehabilitate them. The Claimant in this case failed to cooperate with that humanitarian policy on the part of the Carrier. Therefore, the claim shall be denied.

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