

NOT A DISPUTATION

PUBLIC LAW BOARD NO. 4061

May 11 11 50 AM '87

NAT. RAILROAD  
ADJUSTMENT BOARD

Case No. 27  
Award No. 27

Parties to dispute:

United Transportation Union

and

Norfolk and Western Railway Company

Statement of claim:

Claim made for and on behalf of Decatur Division, Forrest District brakeman C. W. Fonville for reinstatement to the service and pay for all time lost, as a result of the investigation held May 19, 1985, account his failure to comply with Dr. Ford's instructions of January 14, 1986, and company policy.

Opinion of Board:

In 1985, claimant was given a physical examination and the urinalysis was positive for marijuana. During the 45 days given employees to show a negative test, claimant complied and returned to service. As a condition to that return to service claimant understood he would be tested periodically for the following three years. Letters on this specific point were written to him.

On a subsequent test, during 1986, claimant's test was positive (283 NG/ML) and he was dismissed.

The organization complains that on the first charge the date of test was incorrect, a typing error later corrected. Further, it argues that the investigation was held beyond the time limit.

The Carrier has approached this and other cases with the view that the time limit began when the Carrier's highest officer handling appeals was aware of the violation. That is inconsistent with awards on the subject, holding that the Carrier's various officers, such as Dr. Ford, trigger the time limit when they become aware of an offense, especially one so self-evident. While we do not believe in this and other cases in this series are fatally flawed because of the borderline handling, the Carrier is notified that its medical department is held to the same standards as others, such as the special agents, to move promptly and within the restrictions of the agreement.

Claimant clearly violated the important drug rules and standards of the Carrier by testing positive a second time during the "probation" period.

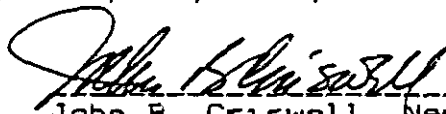
Findings:

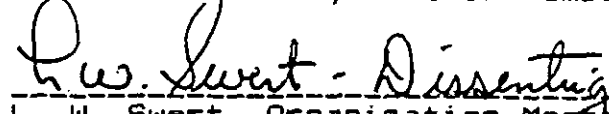
That the agreement was not violated.

Award:

Claim denied.

Dated this 15th day of April, 1987, at St. Louis, Mo.

  
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John B. Criswell, Neutral Member

  
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L. W. Swert, Organization Member

  
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E. M. Martin, Carrier Member