

PUBLIC LAW BOARD NO. 4061

Case No. 33
Award No. 33

Parties to dispute:

United Transportation Union

and

Norfolk & Western Railway Company

Statement of claim:

Claim made for and on behalf of Detroit yardman K. R. Walker for reinstatement to the service of the Norfolk and Western Railway Company, his record cleared of this incident and pay for all time lost, including time lost as a result of the investigation held July 8, 1986, account failure to comply with instructions of Dr. G. W. Ford, Medical Director, to keep his system free of prohibited drugs. ;

Opinion of Board:

Claimant was given a drug urinalysis as part of a 1985 physical examination. The results were positive. He complied with the Carriers drug policy, gave a negative specimen during the 45 days, and was conditionally returned to service. In June, 1986, he was given a return-to-service physical which included a urine test, and it was found positive. He was cited for investigation, and, under the drug policy, dismissed.

The organization points out that claimant went to a private physician a few days following the test by Carrier, had a urine analysis conducted, and that the test was negative. Significantly, the carrier's test showed claimant's level was 58 ng/ml, while the private test began testing at 100 ng/ml and above.

We do not find the private test convincing that the first test was in any way flawed.

Further, the Carrier has an obligation to provide all reasonable assurances that the urine has been handled in such a way that it is clearly that of the individual credited. That obligation extends to the individual when he undertakes a private test. He must also introduce evidence that is convincing to show that he was, in fact, the one who provided the specimen.

We can only conclude that claimant tested positive

during the probation period of the agreement under which he returned to Carrier's service.

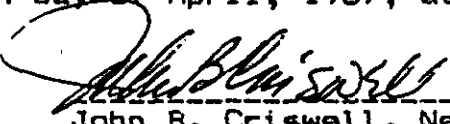
Findings:

That the agreement was not violated.

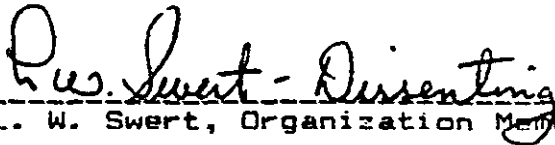
Award:

Claim denied.

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



John B. Criswell, Neutral Member



L. W. Swert, Organization Member



E. M. Martin, Carrier Member