

PUBLIC LAW BOARD NO. 4187

PARTIES) BROTHERHOOD OF RAILROAD SIGNALMEN
TO)
DISPUTE) NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

"An appeal on behalf of Signalman H. J. Hotop to remove the discipline of dismissal assessed as a result of the findings of an investigation held on January 8, 1987."
(Carrier File: SG-MOB-86-1; BRS File: 7110-NW)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Claimant underwent a routine physical examination that included a drug screen urinalysis, and tested positive for marijuana. In pursuance of its medical policy, Carrier withheld Claimant from active service. This policy has been described in Award No. 6 (Case No. 6) of this Public Law Board.

The Claimant complied with company policy and instructions from Carrier's Medical Director by subsequently providing a urine specimen which tested negative for marijuana and other prohibited drug substances. He was therefore returned to active service, but remained subject to those provisions of the company policy which provide as follows:

"[An] employee who is returned to service in this manner may be required by the Medical Department during a 3-year period following the date of his or her return to service to report to a medical facility for further testing to determine whether he or she is using drugs. If a further test is positive, the employee will be subject to dismissal for failing to obey instructions and Company policy."

On December 15, 1986, Claimant was instructed to complete a drug screen urinalysis in pursuance of the above mentioned continuing testing provisions of company policy.

As developed at a company hearing, while being taken to a clinic for the drug screen urinalysis test by Carrier's Supervisor-Signals, in the company of Carrier's Assistant Superintendent-St. Louis, and the vehicle was stopped for a traffic signal at the clinic, Claimant departed the vehicle. In this regard, the Signal Supervisor offered the following testimony at the company

hearing:

"[We] got in front of the Clinic and I did not see any parking spaces, we went around the corner, . . . we got stopped for a stop sign in traffic. At that time, I heard a click in the back seat and I kinda turned around, looked at Harold and he's taking his seat belt off and I asked him what he was doing. I got no respond (sic) from him. I really didn't think too much, the next thing I heard the door unlock. Harold proceeded to open the door and I said Harold, where are you going. He made no answer, he gave me no answer, no statement or anything. He proceeded to start, finish getting out of the truck and I asked him again where he was going. He didn't answer me. He reached up and push (sic) the door lock button down on my door, shut the door and walked off down the highway."

Asked if he took any exception to testimony of the Supervisor as stated above, Claimant said:

"Yes, Sir. Before I exited the truck, I said, oh, shit and that's what happened, I crapped my pants, so I left, I was so embarrassed, I went and grabbed the bus, went home and changed clothes. . . . [I] had tried to get them to go to the Clinic right down Locust Street and let us off. I had to go to the bathroom. I didn't say it. I was so embarrassed anyway but they went around the block twice and they couldn't find a place to park and all of a sudden I passed gas and boom, I crapped my drawers. I did say, oh, shit, before I left the truck."

The Assistant Superintendent essentially corroborated the testimony of the Supervisor-Signals that Claimant had not said anything as he proceeded to leave the vehicle and supported further testimony to the effect that Claimant had not complained of any sickness or discomfort while riding in the truck to the Clinic.

There is no reason to doubt the veracity of the two supervisory officials as to what they say they had observed on the date in question relative to Claimant's actions. At the same time, assuming, arguendo, Claimant had an unfortunate "short call," it is difficult to comprehend his being too embarrassed to relate such happenstance to the two supervisors, but not so embarrassed as to take a public bus home without first going to a bathroom at the clinic to clean himself up. It would seem that Claimant had not only an obligation to inform his supervisors why he found it necessary he not proceed with the test at that time, but that he was also obliged to not have waited until the following day before offering any explanation whatever for his failure to go into the clinic for the test.

In consideration of the record as a whole, there is no question but that Claimant acted irresponsibly and by his own actions in not taking the drug screen urinalysis at the time in question solely put himself in an adverse position subject to disciplinary

action. His bare and unsubstantiated assertion that he had justifiable reason for not taking the test gave Carrier sufficient cause to hold that he was guilty, as charged, of violation of instructions to provide a drug screen urinalysis in accordance with company policy and instructions issued to him by Carrier's Medical Director. Therefore, in view of Claimant having previously tested positive for marijuana, and being afforded opportunity to reveal that his body has meantime stayed clean of any prohibited drugs, and having failed to do so, it may not be said that Carrier did not have just cause to hold that he be dismissed from all service.

AWARD:


Claim denied.



Robert E. Peterson, Chairman
and Neutral Member



W. L. Allman, Jr.
Carrier Member



V. M. Speakman, Jr.
Organization Member

Roanoke, VA
July 31, 1987