

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 14

Case No. 14

System Docket No. BMW-E-D-115

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Dana Densmore was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Scheduled Agreement.

(b) Claimant Densmore shall be reinstated into Carrier's service with all seniority entitlements and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule "K" of the Scheduled Agreement.

FINDINGS

The Claimant was recalled from furlough and submitted to a return-to-work physical examination on April 17, 1989. Following an order to do so, the Claimant failed to provide urine for a routine drug test by urinalysis, although he had signed a consent form to this effect. In accordance with the Carrier's Drug and

Alcohol Policy, the Claimant was advised in writing that his failure to provide a urine sample was considered the equivalent of providing a positive test. He was directed either to enter the Employee Assistance Program or return to provide a negative specimen within 30 days.

The Claimant exercised neither option. He was subsequently advised by letter to his address of record that he was subject to an investigative hearing for failure to comply. Following the hearing, the Claimant was dismissed from service.

The Board finds the Carrier's action fully in accord with its established procedures. This is not affected by the Claimant's failure to attend the hearing and provide testimony in his defense. The resulting dismissal was inevitable.

A W A R D

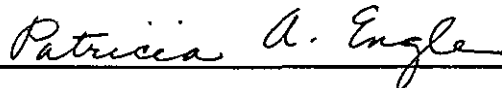
Claim denied.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



P. A. ENGLE, Carrier Member

NEW YORK, NY

DATED: 7-7-92