

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 15

Case No. 15

System Docket No. BMWE-D-143

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Norman Vaillancourt 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 Vaillancourt 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 is a Truck Driver who had 13 years of service with no prior disciplinary record at the time of his dismissal. On February 6, 1991 he was required (with other Truck Drivers) to submit to a periodic physical examinations required by the Interstate Commerce Commission. The examination routinely calls

for a drug test by urinalysis. The Claimant signed the necessary consent form and provided a urine sample. The Nurse found a gross temperature deviation in the sample from the Claimant's body temperature. The Nurse determined, based on her knowledge and experience, that the sample was not made from a current urine stream of the Claimant.

The Claimant was advised to remain and provide another urine sample. Despite consuming large quantities of water, the Claimant insisted he was unable to provide a urine sample. After several hours, he left the facility. Hearsay testimony was to the effect that he was observed by several employees urinating outside the facility near a dumpster.

As a result of these circumstances, the Claimant was subject to an investigative hearing for "dishonesty" and was subsequently dismissed from service.

During the investigative hearing, the Claimant denied that he had failed to provide his own urine sample and also denied that he had gone outside to urinate.

The providing of a urine sample which is in fact not the employee's own urine is, of course, a serious offense. It can only be interpreted as an attempt to pass a drug test under false pretenses. The consequences can be the continued employment -- in this instance, in the sensitive position of operating a vehicle -- of an employee who has drugs in his system.

In this instance, however, the Board finds the penalty of dismissal may be unduly harsh. The Claimant is a 13-year employee

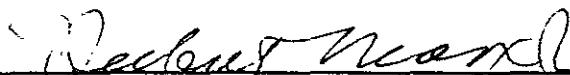
with a clean disciplinary record. Although the hearing officer reasonably determined that the Claimant was dishonest, it remains unknown whether a properly administered test would have shown him positive for drugs.

As a result, the Board will determine that the Claimant shall be offered reinstatement with seniority unimpaired but without back pay or retroactive benefits. In addition, the Claimant shall be required to enter the Company's Employee Assistance Program and be subject to whatever program, including periodic testing, may be required by his EAP counselor. Failure to comply fully will subject the Claimant to dismissal by the Carrier. If these terms are not fully acceptable to the Organization and the Claimant, as indicated by written consent, then the Carrier's dismissal action shall remain in effect.

Because of the particular circumstances involved, this resolution is not intended to serve as a precedent in any manner.

A W A R D

Claim sustained to the extent provided in the Findings. The Carrier is directed to place this Award into effect within 30 days of the date of this Award.



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