

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 8

Case No. 8

Carrier File No. BMW-D-126

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Pedro Alvarez 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 Alvarez 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.

F I N D I N G S

Upon recall from furlough, the Claimant was subject to a return-to-duty physical examination, which routinely included a drug screening. It was found that the Claimant tested positive for marijuana.

Under the Carrier's Drug and Alcohol Testing Policy, the Claimant was advised that he would be required to enter the Carrier's Employee Assistance Program or to provide a negative drug specimen within 30 days. The Claimant did neither and was thereupon subject to an investigative hearing.

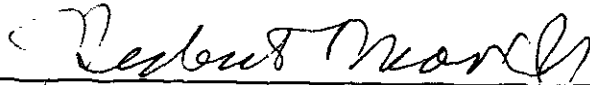
The Claimant failed to appear at an initial hearing, and the matter was postponed. Following proper notice, he also failed to appear at a second hearing. The Hearing Officer justifiably proceeded with the hearing in the Claimant's absence but in the presence of an Organization representative. Following the hearing, the Claimant was dismissed from service.

As noted in Award No. 3, the Carrier's Drug and Alcohol Testing Policy has been supported by numerous previous Awards and needs no further defense here.

The Claimant's apparent lack of concern in continued employment by failing to elect either of two options available to him lends support to the disciplinary action taken by the Carrier.

A W A R D

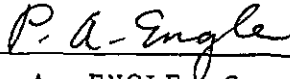
Claim denied.



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



B. A. WINTER, Employee Member



P. A. ENGLE, Carrier Member

NEW YORK, NY

DATED: May 16, 1991