

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 6341**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

and

**DULUTH, MISSABE AND IRON RANGE RAILROAD COMPANY**

)

) Case No. 5

)

) Award No. 5

)

Martin H. Malin, Chairman & Neutral Member  
D. D. Bartholomay, Employee Member  
M. S. Anderson, Carrier Member

Hearing Date: February 12, 2001

**STATEMENT OF CLAIM:**

1. The dismissal of M. Welsh for alleged violation of Rule 9 by testing positive for marijuana in a return to work physical on September 25, 2000, was without just and sufficient cause and based on an unproven charge. Discipline imposed was arbitrary, capricious and excessive.
2. M. Walsh shall be reinstated to service with seniority unimpaired and he shall be compensated for the wage loss suffered.

**FINDINGS:**

Public Law Board No. 6341, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On October 9, 2000, Carrier notified Claimant to report for an investigation on October 19, 2000, concerning his alleged violation of Rules 1, 2, 3, 9 and 12, of the General Rules of Conduct, for allegedly testing positive for marijuana in a return to work physical on September

25, 2000. The hearing was held as scheduled, and thereafter, Carrier advised Claimant that he had been found guilty of the charges and had been dismissed from service.

The Board has reviewed the record carefully. We find that Carrier acted properly in requiring Claimant to submit to a drug test and that Carrier proved the charges by substantial evidence. Claimant's misconduct is extremely serious. However, considering Claimant's twenty-five years of service, his acceptance of responsibility for his conduct, and additional circumstances, unique to this case, and without intending to set a precedent for future cases, the Board finds that Claimant should be given one last chance to demonstrate that he can be a productive drug-free employee. Claimant shall be reinstated to service on a last chance basis, with seniority unimpaired but without compensation for time held out of service, and subject to the following conditions:

1. Claimant must contact the Carrier's Employee Assistance Program Administrator (EAPA) within thirty (30) days of the effective date of this award, and submit to a complete evaluation of his conditions. Claimant must undertake and successfully complete the recommended treatment and aftercare program, if any, including documented attendance of meetings and counseling sessions, as a condition of his continued employment.
2. Claimant shall authorize the EAPA and whomever else he may be referred to by the EAPA to release all records and recommendations pertaining to his treatment and prescribed program of follow-up treatment and/or counseling to the Carrier's Director Medical Services.
3. Claimant shall have no rights to work until the EAPA and the Carrier's Director Medical Services have approved him to return to work. Claimant must pass a return to work physical examination, including drug and alcohol testing.
4. Subsequent to reinstatement, Claimant must furnish the designated Carrier official no later than the tenth day of each month with documented proof that he is complying with any aftercare program recommended by the EAPA.
5. Claimant shall be subject to periodic testing for the presence of drugs and/or alcohol in his system, without prior notice, for three years from his first day worked. The Carrier shall use this authority in a diligent and reasonable manner, and not to harass the Claimant.
6. The Claimant is required to remain in full compliance with the Carrier's drug and alcohol policy. Claimant must understand that his future employment is within his own control since the Carrier is not required to tolerate any repetition of substance abuse.
7. Claimant is required to enroll in Carrier's health insurance program before incurring treatment and aftercare expenses. Should Claimant fail to successfully complete such recommended treatment program, and should he fail to return to service within ninety (90)

days of the effective date of this Award, Carrier may cancel said insurance retroactive to the date of such re-activation, and any and all medical expenses incurred shall revert to and become the sole responsibility of the Claimant.


Should Claimant not accept the above conditions, his dismissal shall stand undisturbed. Should the Carrier determine Claimant's failure to comply fully with these conditions, he shall be removed from service and returned to a dismissed status, without investigation and without appeal.

### AWARD

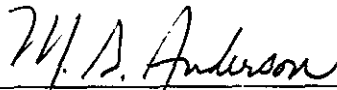
Claim sustained in accordance with the Findings.

### ORDER

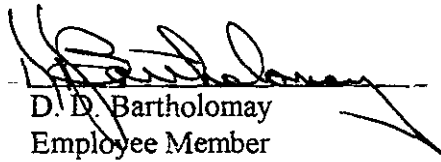
The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto



Martin H. Malin, Chairman



M. S. Anderson  
Carrier Member



D. D. Bartholomay  
Employee Member

Dated at Chicago, Illinois, February 19, 2001