

PUBLIC LAW BOARD NO. 6394

Award No. 4

Parties to Dispute:

Brotherhood of Maintenance of Way Employees
(Consolidated and Pennsylvania Federations)

and

Norfolk Southern Railway Company

Statement of Claim:

Claim on behalf of N. T. Rees for reinstatement with seniority and all other rights unimpaired and pay for all time lost as a result of his dismissal from service following a formal investigation on June 27, 2000, for conduct unbecoming an employee for submitting an adulterated urine sample during a drug test on May 22, 2000, which constitutes refusal to test under Norfolk Southern's medical policy on drugs.

(Carrier File: MW-HARR-00-18-LM-206)

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

Claim disposed of as follows: Claimant was dismissed for allegedly submitting an adulterated urine specimen for a drug test on May 22, 2000. The lab report provided, "SPECIMEN ADULTERATED: PRESENCE OF PYRIDINE DETECTED." The Medical Review Officer's Manual introduced into evidence related that an adulterant, "Urine Luck," which interferes with tests for marijuana metabolites in the urine, "contains the salt pyridium chlorochromate, which dissociates in solution to form pyridine. . . . If the laboratory fails to recover the THC metabolite, it may test the specimen for pyridine by GC/MS." The record also contains a memo from Carrier's MRO, reporting on her conversation with a lab toxicologist who advised that to generate a report of adulterated, pyridine detected, the sample must test positive on an initial screen for pyridium chlorochromate and test positive on a confirmatory test for pyridine. The

memo further reported that pyridium chlorochromate "is neither a component of nor a metabolite of orally ingested substances or medication."

However, the Organization introduced considerable evidence showing that pyridine can enter a person's system through various means, including inhalation of tobacco smoke, consumption of meats cooked at high temperatures, medicines, vitamins and food flavorings and hot coffee. The Organization's evidence came from such credible sources as the American Association for Cancer Research, the Agency for Toxic Substances and Disease Registry, Columbia Encyclopedia, and the National Safety Council.

Carrier contends that the Organization's evidence concerning pyridine is little more than "an attempt to muddy the waters. . ." Carrier urges that the MRO's memo focuses not on pyridine, but on pyridium chlorochromate, which is present in Urine Luck but not in any substance such as food or medicine that may be ingested.

Carrier has attempted to provide by argument what it failed to provide by evidence. That is, Carrier has attempted to show that the Organization's credible evidence that pyridine can enter a person's system by a variety of means was irrelevant to the inference of specimen adulteration resulting from the lab tests. However, there was no evidence offered during the investigation that was responsive to the documentation provided by the Organization. Indeed, the only Carrier witness, the Track Supervisor, candidly admitted that he had no knowledge relevant to the charge beyond serving as a conduit for the documents from the lab and the MRO.

It is not obvious from the record developed during the investigation that the ability of pyridine to enter a person's system by various means was irrelevant to the inference of adulteration resulting from the lab test. On the contrary, the MRO manual indicates that the test for adulteration is a GC/MS test for pyridine because pyridium chlorochromate dissociates in solution to form pyridine. The MRO's memo indicates that a finding of adulteration is reported only after the specimen tests positive on the initial test for pyridium chlorochromate and tests positive on the confirming test for pyridine.

In Award No. 3, we held that the lab and MRO documentation concerning the concentration of nitrates in a urine specimen were sufficient to provide substantial evidence that the Claimant had submitted an adulterated sample. In numerous other awards this neutral chairman has found substantial evidence of Rule G and similar rule violations based entirely on lab reports and MRO documentation. Numerous other referees have reached similar conclusions.

The instant case, however, is different. In the instant case, the Organization introduced substantial credible evidence that called into question the inference of adulteration. There may be answers to those questions as Carrier has argued. But the hearing officer made no effort to contact the MRO or any other scientific expert who could provide such answers by written document or oral testimony. Instead, the hearing officer just left those questions hanging.

Consequently, on the basis of the record presented, we cannot say that Carrier proved the charges by substantial evidence. The claim is sustained. Carrier is ordered to make this award effective within thirty days following the date two members of the Board affix their signatures hereto.



M. H. Malin
Chairman and Neutral Member



P. K. Geller, Sr.
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois, June 15, 2001.

I DISSENT -
USE OF DOT DRUG TEST PROCEDURES AND
NIDA CERTIFIED LAB PRESUMES VALIDITY OF
TESTING METHODOLOGY AND TEST RESULTS. SUCH
NIDA CERTIFIED TEST RESULTS ARE ACCEPTED IN
THE INDUSTRY AS SUBSTANTIAL CREDIBLE EVIDENCE.
THE EVIDENCE SUBMITTED BY EMPLOYEE ONLY
RAISED GENERAL QUESTIONS THAT NO ONE A
HEARING WAS QUALIFIED TO ANSWER. THIS
"EVIDENCE" DID NOT EXPRESSLY
CHALLENGE PROPRIETY OF TESTING FOR
"OVERCOME" THE PRESUMPTIVE
VALIDITY OF THE LABORATORY TEST
RESULT.