

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6871**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES**

-and-

**NORFOLK SOUTHERN RAILWAY
COMPANY**

OPINION AND AWARD

Case No. 2

Claimant D. M. Smith

STATEMENT OF CLAIM:

“Claim Of the System Committee of the Brotherhood that:

1. The dismissal of Welder Helper David M. Smith for alleged “...failure to follow instructions of the Medical Director in letters dated August 16, 1993 and May 27, 1999, in that on January 12, 2004 you submitted a urine specimen, which tested positive for the presence of an illegal drug, marijuana,” is unjust, unwarranted and based on unproven charges.

2. Mr. Smith shall now “...be immediately restored to service, that he be compensated on a make-whole basis for any and all time he was forced to lose as a result of the Carrier’s failure to prove the charges, and the his record be cleared of any mention of this incident.”

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

Claimant Smith, initially hired as a laborer by the former Conrail in 1976, had been serving as Welder’s Helper on the Harrisburg Division when a random drug test administered on January 12, 2004, produced positive results for marijuana. Following formal investigation and hearing held on March 16 and April 6, 2004, Carrier found him guilty of a Rule G violation and by letter of April 23, 2004, dismissed him from service. The Organization challenged that action through a timely Claim, progressed the matter in the

usual and customary manner on the property, and then brought the dispute to the Board for final adjudication.

The right of employers in the railroad industry to control the use of intoxicants during and outside of work hours for protection of public and employee safety is long established. Accordingly, in an environment where safety hazards are so significant, rail referees rarely subvert policies requiring tests for use of drugs/alcohol and are equally reluctant to overturn discipline, including dismissal, for demonstrated use of prohibited substances

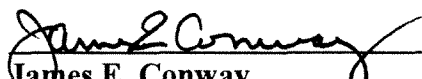
This dispute, however, presents a number of unusual factors. For that reason, while the record supports the charge, based on the particular circumstances involved the Board concludes Claimant should have one last chance to demonstrate that he can resume productive employment upon satisfying the rehabilitation required by DARS. Without precedent or prejudice to any future matter, the Claim therefore will be partially sustained based upon the facts and circumstances presented in accordance with the following:

A W A R D

Promptly following execution of this Award by a majority of the Board Members, Carrier shall offer Claimant an opportunity to secure reinstatement to his prior position provided he satisfactorily completes the DARS rehabilitation program. Claimant is directed to present himself to Carrier's DARS Counselor within thirty (30) days of this Award and commence participation in the prescribed program on a timely basis.

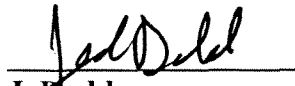
Provided Claimant timely enters the program, completes any rehabilitation required by DARS and then establishes through appropriate testing that he is free of prohibited substances, his full seniority and benefits shall be restored. If he then satisfies the requisite return-to-work physical, he shall be reinstated to service without compensation for time lost while out of service.

If Claimant fails to present himself to DARS as directed or fails to complete any rehabilitation required by DARS, his dismissal as a result of the March 16 and April 6, 2004, investigation shall not be disturbed.


James E. Conway
Chairman and Neutral Member

OPINION AND AWARD

Public Law Board 6871 – Case No. 2



J. Dodd
Employee Member



D. L. Kerby
Carrier Member

Dated at Great Falls, VA

4/7/06