

PUBLIC LAW BOARD NO. 1760

Award No. 140

Docket No. 140

Carrier File MW-DECR-91-66-LM-399

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railroad Company
 (former Wabash)

Statement
of Claim: Claim on behalf of C. H. Mills Jr. who was dismissed
December 26, 1991 for violation of Carrier's Policy on
Drugs.

Findings: The Board has jurisdiction by reason of the parties
Agreement establishing this Board for that purpose.

The Claimant, on November 6, 1991, pled guilty to the offense of unlawful possession of cannabis in the Circuit Court of the 8th Judicial Circuit of Illinois in Pike County. Carrier's Special Agent, on November 11, 1991, advised the Carrier thereof which provided it with the first knowledge thereof. A letter of charge was issued that date advising Claimant to attend a formal investigation. It read:

"We have just been advised that on/or about August 13, 1991 you pled guilty to the offense of unlawful possession of cannabis in the Circuit Court of the 8th Judicial Circuit of Illinois in Pike County. Therefore, arrange to attend an investigation... November 26, 1991. You are charged with the violation of the policy and drugs of Norfolk Southern Corporation and its railroad subsidiaries as found on page 133 of the Safety and General Conduct Rule which states 'off the job drug activity. Employees who are convicted in connection with incidents involving off-the-job drug activity will be considered in violation of this policy and subject to dismissal.'"

The investigation was postponed, rescheduled and held on December 10, 1991. As a result thereof, the Carrier concluded Claimant to be culpable. He was dismissed from service as discipline therefor.

The Claimant was accorded the due process to which entitled under Rule 30.

There was sufficient evidence adduced to support Carrier's conclusion of the Claimant's culpability. It is clear that the record supports the Carrier's charge. The Claimant did plead guilty to the criminal charge of unlawful

possession. That plea and conviction substantiates that the Claimant had thereby violated the well articulated and well disseminated Carrier's drug policy. As pointed out in our Award No. 109, the findings of which by reference are included herein, "Public safety consideration permits and supports Carrier's acting within its discretion to dismiss an employee using, or in some other way, being associated with illegal controlled substances."

The Claimant's unlawful drug use was contrary to the written warning that Carrier gave him. Such drug policy must be upheld absent a sound reason therefor, to assist and permit the Carrier in controlling the threat posed by drug use in the transportation industry. Such illegal use is harmful to the employees, the public and the Carrier alike. This claim is denied.

Award: Claim denied.



S. A. Hammons Jr., Employee Member



L. F. Miller, Jr., Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member