

PUBLIC LAW BOARD NO. 1760

Award No. 148

Case No. 148

File MW-DECR-92-78

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk & Western Railway Company

Statement

of Claim: Claim on behalf of J. L. Perkins requesting reinstatement and pay for time lost as a result of his dismissal for failure to comply with the instructions of Carrier's Director of Medical Services and Company policy.

Findings: This Board has jurisdiction of this case by reason of the parties Agreement establishing the Board therefor.

The Claimant, a Machine Operator, tested positive for marijuana in April 1991. Subsequently, he contacted a DARS counselor and enrolled in the DARS program. He successfully completed the requirements of the DARS program. The Claimant was so advised by the Medical Director Dr. J. P. Salb to that effect and advised that he would be returned to service subject to retesting for a period of five years. Dr. Salb reminded the Claimant that any future positive drug test would subject him to a dismissal.

The Claimant, on November 24, 1992, was sent for a follow up drug screen pursuant to Dr. Salb's letter of March 30, 1992. The specimen provided therefor tested positive for marijuana.

The Claimant was removed from service pending a determination of the facts. He was cited to a formal investigation for "failing to comply with the company's medical policy and the instructions in the letter to you from Dr. Salb dated March 30, 1992, to keep your system free from prohibitive substances and that on November 24, 1992 you tested positive for marijuana."

The investigation was finally held on May 26, 1993. As a result of the evidence adduced, the Carrier concluded Claimant guilty as charged. He was dismissed from service as discipline therefor.

Claimant was accorded the due process to which entitled under his discipline rule.

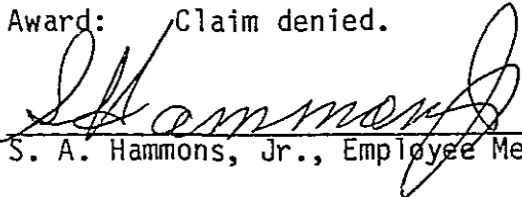
There was sufficient evidence adduced, including the admissions of the Claimant, to support the Carrier's conclusions of culpability.

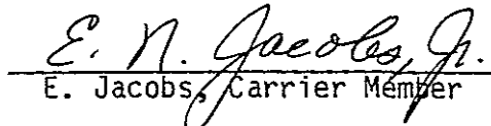
The claim here appealed must be deemed to be a request for leniency. The Claimant, while presumed to be aware of the February 12, 1985 medical policy, as modified in August 1985, was specifically, again, put on notice on March 30, 1992 when he was permitted and welcomed back to service. The Claimant was advised that he would be subject to a five year period of retesting and that a positive drug finding would subject him to dismissal.

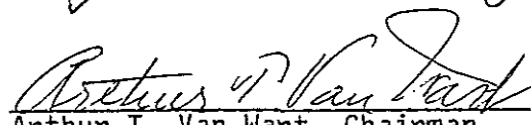
The Carrier's drug policy has been well articulated. It has been legally assailed and not found wanting. It has been arbitrarily found sound. The policy has been uniformly and consistently applied.

While this or other Boards may modify discipline under certain circumstances, the Board is without authority to grant leniency as that right is possessed only by the Carrier. The Board could, however, recommend that the Carrier take close look of the transcript. Be mindful of the role and the character of the employee witness. The knowledge that A.A. representatives were testifying favorably for the Claimant as it related to his trying to stay clean. They rarely do so. The Board believes that the Carrier should have given as much consideration as is possible to this nature. In the final analysis, nonetheless, it is a matter for evaluation by the Carrier. The impression is the Carrier did evaluate and pass its judgment thereon and denied the claim because it strongly believed in its policy because it protects the interest of all others as well as the Claimants. The claim is denied which will serve as well as a dismissal.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


E. N. Jacobs, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued July 30, 1994.