

PUBLIC LAW BOARD NO. 1760

Award No. 156

Case No. 156
File MW-FTW-93-86

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

Statement
of Claim: Claim on behalf of E. D. Dandridge 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 Carrier, on February 12, 1985, placed all employees on notice that all Company physicals would henceforth include a drug screen urinalysis. That Company medical policy forbade "the act of employment for those who depend on or use drugs which impairs sensory, mental or physical functions."

The above policy was modified in August 1985 requiring any employee who tested positive for a prohibitive substance to submit a negative retest to a Carrier designated facility or seek help from the Company's drug and alcoholic rehabilitation services (DARS) program within 45 days of the letter informing him on the positive test result. Employees complying with such instructions were returned to service upon proof of testing negative. Such employees were and are also instructed, however, to keep their system free from prohibitive drugs. Such employees are also advised that they may be subject to further testing after the return to service. They were further advised that if any future test was positive that they would be subject to dismissal for failure to obey instructions and Company policy.

Again, in September 1986 the drug policy was distributed to all employees in a pamphlet entitled health and safety information along with information on drugs and Federal Railroad Administration (FRA) regulations on the control of alcohol and drug abuse in railroad operations.

The policy contained in the above pamphlet was replaced on January 26, 1990 by an addition to the Safety and General Conduct Rule. Such policy was revised slightly to make it consistent with a new FRA regulation. The essence of the

change is that if the employee tests positive under any other circumstances outlined, i.e., physical examination, or if the Medical Director has reason to believe, or has a question as to whether the employee meets the Company's medical standards, or when required or permitted by applicable Federal regulations.

Here that Claimant was notified by the Medical Director on November 25, 1987 that the drug screen included with his return-to-work physical exam tested positive for marijuana. He was removed from service pending his supplying a negative drug screen.

The Claimant furnished a negative drug specimen within the allotted period, 45 day period. Dr. Ford advised the Claimant on December 17, 1987 that he was being returned to service but that he must keep his system free of prohibitive substances and that should a further test be positive he would be subject to dismissal.

The new Medical Director J. P. Salb wrote to the Chief Engineer on October 13, 1993 advising that he had reason to question the Claimant's ability to meet the medical standards. The Chief Engineer was instructed to have the Claimant tested at a medical facility within 48 hours. The Claimant, on October 18, 1993 submitted a urine test for drug testing and that sample tested positive for cocaine and marijuana.

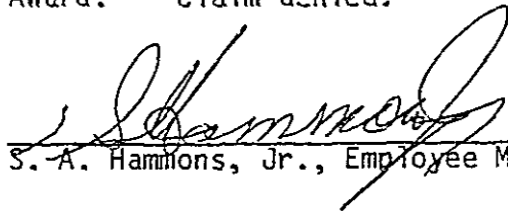
The Claimant was removed from service, cited to an investigation for failure to comply with the Company policy and the instructions of the Carrier. As a result of the investigation held on December 8, 1993, Claimant was concluded to be guilty as charged. He was dismissed from service as discipline therefor.

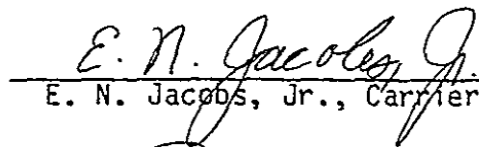
The propriety of Carrier's policy on drugs has been confirmed in litigation and arbitration, including awards on this property. Here, the Carrier established through substantial, credible evidence on the record that the Claimant violated the Carrier's drug policy. The Claimant also failed to follow the instructions of the Carrier's Medical Director. Awards by our Board and other adjustments boards on the property have held the proposition that the Carrier has lawful and reasonable rules, that they are uniformly applied and that such Boards have generally upheld Carrier's drug policy in cases as such as here where the employee has failed to comply with the Carrier's drug policy to keep his system clear of prohibitive drugs. The Claimant has admitted that he knowingly used marijuana and cocaine but asserts that he is now seeking treatment for a drug

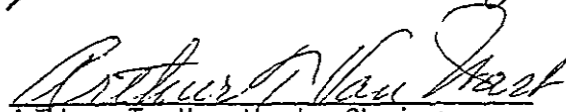
problem. While that is commendatory, the Claimant's chosen action was outside the fact and purpose of the provisions of the policy. This Board unlike the Carrier cannot extend leniency.

The claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


E. N. Jacobs, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member