

PUBLIC LAW BOARD NO. 1760

Award No. 83

Case No. 83

Docket No. MW-DEC-81-21

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company
 (Former Wabash)

Statement

of Claim: Claim on behalf of V. T. Riley for reinstatement and back pay from the time of his dismissal as the result of a formal investigation held on May 13, 1986.

Findings: The Board has jurisdiction of this case.

Carrier issued a letter February 12, 1985 notifying all employees that Carrier's general policy and rules provide for the dismissal of employees who report for duty under the influence of drugs or alcohol or who use or possess such substances while on duty. Further, that all company physical examinations would include drug screen urinalysis and that a positive drug screen will not permit an employee to perform service until a negative re-test. Also, that employees withheld from service under this medical policy are not subject to discipline.

Claimant, in March 1985, underwent a return to work physical examination including a drug screen urinalysis. He tested positive for marijuana. He was held out of service and advised that he would have to submit to a negative drug screen before he could be allowed to return to work. Claimant submitted a negative re-test and was permitted to mark up on April 9, 1985.

Carrier amended its above policy by notice of February 12, 1985. It advised on August 1, 1985 that Employees who had tested positive and then provided a negative sample, that they would be required to undergo periodic retest for three years instead of an indefinite period after their return to duty.

Claimant was notified April 7, 1986 by the Division Engineer that he would be taken to Decatur Memorial Hospital to void a urine sample for testing. Claimant requested that the test be postponed. That request was agreed to. Claimant contacted the Division Engineer on April 9th and advised that he was ready to be tested. However, after he was taken to the hospital he refused to give a sample in the presence of a witness. Further, despite arrangements, or several unnecessary but reasonable alternatives being offered the Claimant refused to void a urine sample.

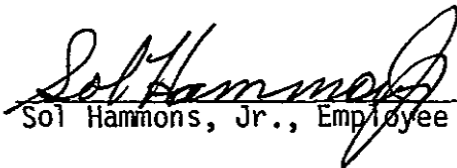
He was required to attend a formal investigation, on May 13, 1986, for his failure to follow instructions issued by the Division Engineer Maintenance and Carrier's Medical Director. As a result thereof, he was dismissed from service as discipline therefor.

Claimant took no exception to the letter of April 15, 1985 from Dr. Ford. He voluntarily agreed, and, in fact, had requested the urinalysis examination that had been postponed from April 7 to April 9, 1986. It is necessary that in giving the urine sample that the integrity of the sample be maintained by the presence of a witness. Reasonable, but unnecessary, arrangements were offered in order to obviate any fear of personal embarrassment.

Agreement Rule 50 has no application to this case. Notwithstanding, argument, even if it did Claimant failed to comply with paragraph (d). Claimant was afforded two opportunities to demonstrate that he was physically fit for his job and free of prohibitive drugs. He refused two times to take the required physical tests. Claimant created the situation from which he now appeals. His failures to comply with instructions to take a urinalysis, particularly when he so requested and had agreed to take such test is cause to consider such failures to be insubordinate and contumacious. Further, such failures cause belated challenges and exculpatory arguments to become illogical to say the least.

Claimant's failures were not only insubordinate but provide grounds for raising an inferential admission that he was not drug free. The purpose of the test must be viewed in light of the recognized drastic need to protect the public's, employee's, Carrier's, and government's interests to assure eradication of the drug and alcoholic problem by implementation of a fair and reasonable program. Carrier's program is deemed to be such. This claim will be denied.

Award: Claim denied.


Sol Hammons, Jr., Employee Member


J. Abbateello, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued June 9, 1988.