

PUBLIC LAW BOARD NO. 1760

Award No. 87

Case No. 87
File MW-DEC-80-63

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

Statement

of Claim: Claim on behalf of D. M. Barrett requesting that he be reinstated with all rights and be paid for all time lost as a result of an investigation held April 14, 1987 in which he was charged with failure to comply with instructions to provide a drug screen urinalysis in accordance with Company Policy.

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

Claimant, in March 1985, underwent a return to work physical which included a drug screening urinalysis. Test results reflected positive for marijuana. Carrier's Medical Director, Dr. Ford, informed the Claimant of this fact in a letter dated April 9, 1985. He also advised the Claimant that he must rid his system of prohibited drugs within 45 days or he would be subject to dismissal.

Claimant Barrett produced a negative sample on April 26, 1985 and was returned to service by letter May 2, 1985. He was notified, January 14, 1986, that he would be subject to a retest for a period of three years from the date of his return to work, May 2, 1985 and that the discovery of prohibited drugs in his system would result in his dismissal from service.

Claimant was retested on April 8, 1986 and tested positive for marijuana. He was dismissed December 25, 1986. He was reinstated to service on a leniency basis on October 13, 1986.

The Medical Director called Claimant's supervisor on April 13, 1987 instructing him to take the Claimant for a retest in accordance with the company policy. Said Supervisor on April 14, 1987 went to the job site where Claimant was working and advised that he was instructed to take him to Doctors Family Practice for a retest. Claimant refused stating that he would not go and provide a urine sample without his attorney being present. He was instructed three times to submit to a urine sample and Claimant refused. Claimant was then told that he was being removed from service pending an investigation.

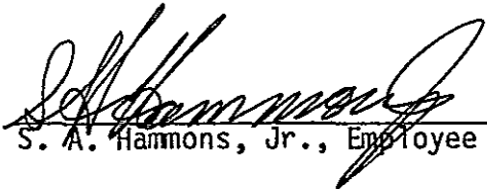
As a result of the formal investigation held, Carrier concluded Claimant to be culpable of the insubordination charge. He was dismissed from service as discipline therefor.

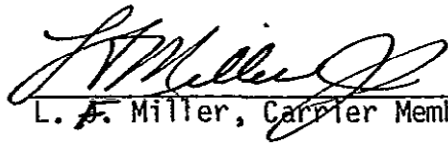
We find no cause in this record to take exception to Carrier's action. Claimant was accorded the due process to which entitled under his discipline rule.

There was sufficient evidence adduced to support Carrier's findings that Claimant failed to carry out reasonable instructions.

The discipline assessed, particularly in light of the Claimant's poor service record, was not unreasonable. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


L. F. Miller, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued July 27, 1989.