

PUBLIC LAW BOARD NO. 1760

Award No. 89

Case No. 89

File MW-DEC-84-45

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

Statement

of Claim: Claim on behalf of J. A. Douglas requesting reinstatement and pay for time lost in connection with his dismissal for failure to comply with the instructions of the Medical Director.

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

The Carrier, under date of February 12, 1985, placed all its employees on notice that all Company physicals would include a drug screen urinalysis and that Company medical policy forbade "the active employment of those who depend on or use drugs which impair sensory, mental and physical functions."

The employees were notified on August 1, 1985 that the above policy was modified; that any employee who tested positive for a prohibitive substance would be required to submit a negative retest with Carrier-designated facility within 45 days of the letter informing him of the positive test result; that employees who had tested positive but then provided a negative sample would be required to undergo periodic retest for 3 years after their return to duty in order to monitor their compliance.

In the instant case, Claimant underwent a return to work physical examination on March 11, 1985. As a result of the drug screen urinalysis the test proved positive for marijuana. Mr. Douglas was held out of service until a negative urine sample was provided on June 24, 1985. The Claimant was subsequently returned to service. He was advised that he would be given periodic retest for 3 years after his return to duty.

The Carrier's Medical Director on June 17, 1988 advised Claimant's Supervisors that he was required to take a follow up drug screen urinalysis. Claimant's sample tested positive for marijuana.

Claimant was removed from service pending a formal investigation on the charge of failure to comply with Company policy and the instructions of the Carrier's Medical

Director. As a result of the formal investigation, held on July 26, 1988, Carrier adduced therefrom that Claimant was guilty. He was dismissed from service as discipline therefor.

Claimant was accorded the due process to which entitled under his discipline rule. The allegation that Rule 30 was violated because he was removed from service was not timely raised and is dismissed.

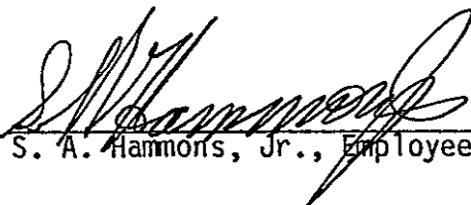
There was sufficient evidence adduced, including the admissions of Claimant, to support Carrier's conclusion of the Claimant's culpability of the charges placed against him.


Carrier in keeping with its obligations to the public and its employees developed a reasonable and fair drug policy which was upheld by the US District Court for the Northern District of Illinois in RELA v. NW, No. 86, C 20646. Claimant tested positive for marijuana on the follow-up drug screen GS/MS. He clearly had failed to keep his system free of prohibited substances as instructed by the Carrier's Medical Director and Company policy. Therefore, he was subject to the discipline assessed.

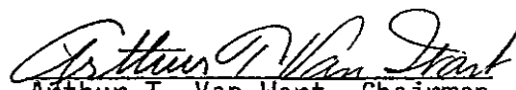
The Claimant was handled consistent with the policy when he was returned to service on June 24, 1985. He was dismissed in accordance with the application and understanding of the same policy.

The discipline is found to be 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.