

PUBLIC LAW BOARD NO. 1760

Award No. 94

Case No. 94
File MW-DEC-87-9

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

Statement

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

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

This is another in the series of drug cases involving employees who are returning to service, and after taking the required physical examination, including a drug screen urinalysis, are found to have tested positive. Such employees resubmit a negative test finding within the required 45 days and they then are reinstated to service but are subject to sporadic testing for 3 years and on such testing are again found to have tested positive. Thus, failing to comply with the conditions under which they were reinstated to service they now are in violation of Carrier's medical policy and after a formal investigation are dismissed from service therefor.

See our Awards 85, 87, 89 and 94, the findings of which, by reference, are incorporated herein.

In the instant case, following a return to work physical examination on December 8, 1986, the results of the Claimant's urinalysis test reflected positive for marijuana. The Claimant was advised, on December 26, 1986, to produce a negative test within 45 days. He submitted a urine sample on February 5, 1987 that tested positive for marijuana. The last deadline date for presenting a negative test was February 11, 1987.

Claimant neither entered the DARS program, nor submitted the required negative urine sample, by February 11th. His supervisor was so notified on February 13, 1987.

Claimant was required to attend a formal investigation on the charge for such failure. The investigation was postponed until May 26, 1987, at which time, it was held. As a result of the evidence adduced thereat Carrier

concluded that Claimant was guilty. He was dismissed from service as discipline therefor.

Claimant admitted that he received Dr. Ford's December 26, 1986 letter. He also conceded that he neither enrolled in the DARS program, nor had provided a negative urine sample within the 45 day limit. In this, as all its other tests, Carrier employed the EMIT and confirmed all positive EMIT tests by a GC/MS (Gas Chromatography Mass Spectrometry) which is supported by a Mayo Clinic study:

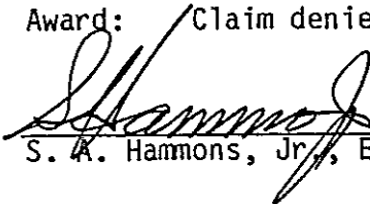
"If a positive test result will put the patient in consideration jeopardy and the screening result is the only evidence of drug use, confirmatory testing is imperative. Of the confirmatory tests, GC/MS seems to have the specificity necessary to provide a high level of confidence in the results. A combination of the EMIT procedure with a sensitivity level of 20 NG/ML and GC/MS confirmation yields virtually 100% accuracy in detection of marijuana abuse."


The Brotherhood also believes that the latter test is fair, reasonable and realistic because it so stated in its May 1987 edition of the BMWE journal.


We find no errors so egregious in the handling of this case as to be the cause for reversal of the discipline. Claimant may have tested negatively in a drug screen on March 10, 1987, nearly 30 days after the required 45 day grace period but such test failed to comply with Dr. Ford's instructions and the Carrier's drug policy. Further, the sample in that test and the sample used in the Carrier's required test differ. Irrespective, our Board decided that issue previously by denying the claim based thereon in our Award No. 84.

In the circumstances this case, the Board finds the discipline imposed is consistent with its well publicized drug policy. 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