

BEFORE PUBLIC LAW BOARD NO. 1837

Brotherhood of Maintenance of Way Employees
and
Norfolk and Western Railway Company

Case No. 75

Statement of Claim: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it improperly withheld Trackman S.A. Black from service without just and sufficient cause and without the benefit of an investigation (File MW-FTWS-88-198).

2. Trackman S.A. Black shall now be compensated for all time lost commencing October 17, 1988 and continuing until such time he was returned to service.

Findings:

The Claimant was employed as an extra gang truck driver by the Carrier. In August 1988, Claimant was notified that he had tested positive in a drug screen and must submit a negative sample within forty-five days. Claimant subsequently submitted a negative sample and was returned to service with the Carrier on October 17, 1988. On or about October 26, 1988, before Claimant was able to displace a junior employee, the Carrier notified the Claimant that he would continue to be held out of service pending further medical review. The Claimant eventually returned to service on December 15, 1988, after a psychiatric examination was completed.

The Organization filed a claim on the Claimant's behalf, contending that the Carrier withheld the Claimant from service for about two months without verifiable justification. The Carrier denied the claim, the Organization appealed, and the claim now is before this Board for adjudication.

This Board has reviewed the record in this case and we must find that the Organization has not presented sufficient evidence to support its position that the Claimant was unreasonably held out of service. Also, the Organization has not proven that this case involved discipline requiring an investigation pursuant to the Rules. Consequently, the claim must be denied.

The record reveals that the Claimant tested positive for marijuana in August of 1988. He later recognized his problems and entered the Carrier's DARS program in September of 1988, but he did not successfully complete that program. The Claimant did furnish a negative urine sample and was subsequently returned to work on October 17, 1988.


However, on October 26, 1988, Claimant told the Supervisor that he needed more time because of "personal problems". After a second complaint from the Claimant five days later, Claimant was referred to a psychiatrist whom he saw on December 2, 1988. The psychiatric report was received by the Carrier on December 13, 1988, and the Carrier was advised that the psychiatrist had determined that the Claimant was not suffering from a mental disease. Consequently, the Claimant was returned to service on December 15, 1988.

It is fundamental that a Carrier has the right to determine the physical and mental fitness of an employee before it sends him out to work on the Carrier property. Claimant was an admitted drug user who had indicated to his Supervisor that his "personal problems" were overwhelming him and he was not ready to return to work. Given those statements on the part of the

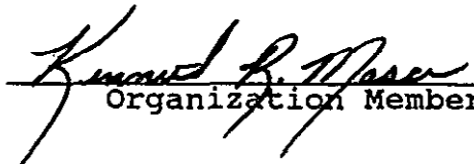
Claimant about his own physical and mental well-being, Carrier had a right to require a psychiatric examination before putting Claimant back to work. Once the report came back and the Carrier was satisfied that the Claimant was physically and mentally fit, it put him back to work in a timely fashion. Consequently, this Board finds that there was no violation of the Rules and the claim must be denied.

AWARD

Claim denied.



PETER R. MEVERS
Neutral Member

Carrier Member

Organization Member

Dated: OCT. 20, 1992