

BEFORE PUBLIC LAW BOARD NO. 1837

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

Case No. 76

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

1. The Carrier violated the Agreement when it improperly withheld Trackman Gary L. Overly from service from June 19 1989 through July 5, 1989 (File MW-FTW-89-23).
2. Trackman Overly shall now have his record cleared of the incident and compensated for one hundred and four hours at his respective straight time rate of pay.

Findings:

On June 9, 1989, Claimant furnished a specimen for urinalysis as part of a back-to-work physical examination; the results of the drug screen were positive for cocaine. The Claimant was removed from service on June 19, 1989, and told that he had 45 days in which to submit a negative specimen. Claimant submitted a second sample that same day which tested negative, and he later was returned to service.

The Organization filed a claim on the Claimant's behalf, contending that the Carrier improperly withheld the Claimant from service. The claim contended that the Claimant was told by his supervisor that if he were to provide a negative sample on the date that he was removed he would be paid for all lost time. The Carrier denied the claim, the Organization appealed, and the claim now is before this Board for adjudication.

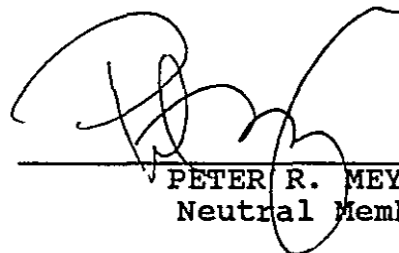
This Board has reviewed the record in this case and we find that the Organization has not presented sufficient evidence that

the carrier's urine test was in error or that there were any promises made to the Claimant about payment for his lost time. Therefore, the claim must be denied.

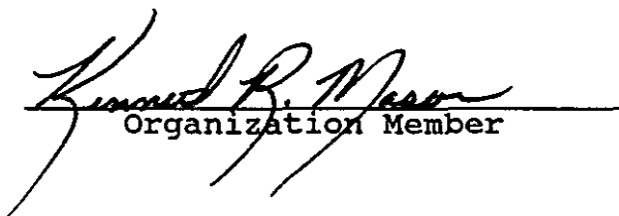
The record in this case indicates that the Claimant was withheld from service until the Carrier was completely convinced that the Claimant's system was free of all illegal substances and that it was safe to allow him back to work. Claimant, himself, had waited a long time before retaking the test. There was no discipline; nor was the Claimant denied any of his rights. The Carrier has a right to determine whether an employee is fit for service before it puts him back on the job. The Carrier did this in a reasonable amount of time. Therefore, the claim must be denied.

AWARD

Claim denied.

  
PETER R. MEYERS  
Neutral Member

  
Carrier Member

  
Organization Member

Dated: OCT. 20, 1992