

BEFORE PUBLIC LAW BOARD NO. 1837

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

Case No. 77

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

1. The dismissal of Extra Gang Laborer-Truck Driver Gary L. Overly, Sr. for alleged insubordination in that he did not keep his system clear of drugs was without just and sufficient cause, on the basis on an unproven charge and in violation of the Agreement (File MW-FTW-90-58).
2. Extra Gang Laborer-Truck Driver Gary L. Overly, Sr. shall be reinstated with seniority, vacation and all other rights unimpaired and compensated for all wage loss suffered.

Findings:

In June of 1989, Claimant submitted to a drug screen. By letter dated June 19, 1989, the Claimant was notified that he tested positive for cocaine and was being removed from service. He was informed in a letter dated June 30, 1989, that he would be subject to periodic tests over the next three years and that future positive tests would result in his dismissal.

On June 19, 1990, Claimant submitted to a drug test and was once again found to be positive for cocaine. Carrier subsequently charged the Claimant with failure to comply with the instructions of its Medical Director that he keep his system free of prohibited drugs. After an investigation of this charge, Claimant was dismissed from the Carrier's service on July 31, 1990.

The Organization filed a claim on the Claimant's behalf, challenging the Claimant's dismissal from service. The Carrier

denied the claim, the Organization appealed, and the claim now is before this Board for adjudication.

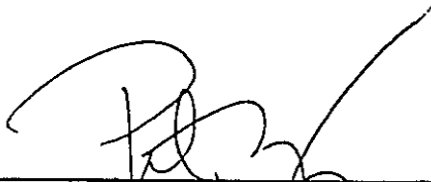
This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of a second offense of having illegal drugs in his system. Although the Organization raises questions about the validity of the test, there is simply no evidence in the record to support the Organization's position that the test was invalid. Claimant's own test results were not obtained quickly enough to raise any doubts with the Carrier's results.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

This Board has held on numerous occasions in the past that a second positive test for drugs or alcohol can lead to dismissal. The Claimant was fully aware that a future positive test would be cause for his dismissal. The Claimant tested positive for illegal drugs a year after the initial test and was dismissed. There is nothing unreasonable, arbitrary or capricious with the Carrier's action in dismissing the Claimant. Therefore, the claim will be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: OCT. 20, 1992