

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

Award No. 81

STATEMENT OF CLAIM: Claim of the Brotherhood that:

Claim on behalf of J. Darbin requesting that he be reinstated and paid for time lost, as a result of his dismissal from service following investigation held on July 17, 1992, in connection with failure to comply with instructions of Carrier's Medical Director and Company policy by not keeping his system free of prohibited drugs.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence to support the finding that the Claimant was guilty of testing positive for cocaine in a follow-up test on September 23, 1991. The Claimant had previously tested positive for cocaine in September of 1989. He subsequently satisfied the criteria for a return to service and was subject to follow-up tests for the next five years pursuant to the Carrier's drug program. He failed in his attempt to keep his system free

from prohibited substances in accordance with the Carrier policy.

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 actions to have been unreasonable, arbitrary or capricious.

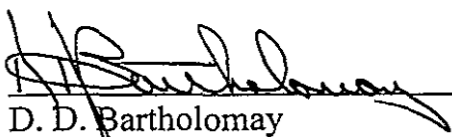
There have been numerous cases on this Board and others between this Organization and this Carrier which have upheld discharges of employees who have failed to keep their system free of prohibited drugs in accordance with the Carrier policy after incurring the initial positive test. See Special Board of Adjustment 1048 Awards 13, 17, 22, 23, 24, 30, and 31 and Special Board of Adjustment 1049 Awards 19, 24, and 28.

Given the background of this Claimant and the previous holdings of these Boards, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it discharged the Claimant. Therefore, the claim will be denied.

AWARD

Claim denied.


 Peter R. Meyers
 Neutral Member


 D. D. Bartholomay
 Organization Member


 E. N. Jacobs, Jr.
 Carrier Member

DATED: 1-3-95

DATED: December 21, 1994