

BEFORE PUBLIC LAW BOARD NO. 1837
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
AND
NORFOLK AND WESTERN RAILWAY COMPANY
Award No. 93

STATEMENT OF CLAIM: *Claim of the Brotherhood that:*

Claim on behalf of K. Poole requesting that he be reinstated and paid for time lost, as a result of his dismissal from service following investigation held on August 6, 1993, in connection with failure to comply with instructions of Carrier's Medical Director and Company policy by failing to cooperate with the rehabilitation required by DARS.

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 in the record to support the finding that the Claimant was guilty of failing to cooperate with the rehabilitation program required by the DARS Program after being found positive for drugs. The record is clear that the Claimant, after entering the DARS Program, continued to use prohibited substances, failed to attend or actively participate in AA/NA meetings as instructed, and refused to enter treatment

facilities as instructed. Claimant also failed to contact his counselor as he was required to do.

Carrier rules state the following:

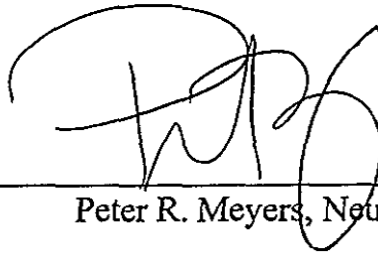
An employee who fails to timely contact DARS or to cooperate with any rehabilitation required by DARS will be subject to dismissal for failing to comply with Company Policy.

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.

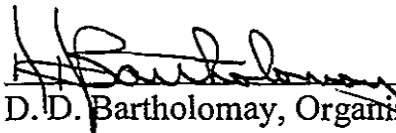
Given the un rebutted evidence of the failure of the Claimant to comply with the Carrier DARS policy and attempt to rehabilitate himself, this Board cannot find that the action of the Carrier in terminating his employment was unreasonable, arbitrary or capricious. Therefore, the claim will be denied.

AWARD

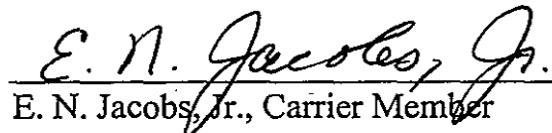
Claim denied.



Peter R. Meyers, Neutral Member



D.D. Bartholomay, Organization Member



E. N. Jacobs, Jr., Carrier Member

DATED: 1-3-95

DATED: December 21, 1994