

PUBLIC LAW BOARD NO. 3845

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of
Way Employees

and

Norfolk and Western Railway
Company (Lake Region)

Case No. 14
Award No. 14

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier's decision to withhold from service Extra Gang Laborer Leanel Jones for allegedly testing positive for marijuana was without just and sufficient cause and unsubstantiated.
[Organization File MW-BVE-10]
- (2) Extra Gang Laborer Leanel Jones shall be reinstated to service and compensated for all wage loss suffered."

OPINION OF THE BOARD

Claimant was employed as an Extra Gang Laborer in furlough status just prior to the events leading up to this dispute. On March 28, 1985, Claimant was recalled from furlough and underwent the usual return-to-duty physical examination which included a drug screen urinalysis. On April 11, 1985, the results of the drug test were received from the National Health

Laboratories of Vienna, VA. The results were "POS/87" and "POSITIVE" for marijuana. Carrier's System Medical Director, in accordance with Carrier's medical policy, thereupon advised Claimants' supervisor that Claimant was to ". . . be held out of service."

Claimant was then promptly notified of the Carrier's policy that he was being afforded two opportunities for retesting at a time of his own choosing. He was advised that if either retest was negative, he would be permitted to return to service. Claimant was also advised that if he felt a possible physical or psychological dependency on marijuana or other drugs, he should contact an employee counselor for help.

On his own initiative, Claimant took a second test using Carrier's medical facility on April 26, 1985. The result from the same laboratory was "POS/63" and "POSITIVE" for marijuana.

On October 2, 1985, Claimant underwent a third test in the manner already described which proved negative for marijuana or other drugs. Shortly after receipt of that result, Claimant was advised by Carrier that he could return to work, although a personal injury and a further furlough postponed his actual return until May 5, 1986.

The basis for this grievance is Claimant's insistence that the test results of March 28 and April 26 were inaccurate in light of two additional drug screen urinalyses conducted on April 16 and April 25, 1985 by John R. Meranda, M.D., Claimant's private physician, utilizing the laboratory of the St. Anthony Hospital. Those two tests showed negative for marijuana.

The issue here is not one of discipline but whether Carrier is entitled to rely on the medical findings and conclusions of its own staff, including third-party scientific consultants of its choice, in the face of contradictory findings and conclusions of an unrelated third party. The answer must be in the affirmative especially when, as here, the necessity for continuous custody of the sample tested is essential to deriving an accurate and reliable result and the sophistication of the testing methods required may be beyond the capability of laboratories which do not have specialized expertise.

There has been no suggestion here that Carrier's drug policy, of which it is justifiably proud, was administered unfairly, improperly or in bad faith. Indeed, the record shows that Carrier continuously sought Claimant's return to work as soon as he was medically qualified to do so; that Carrier was scrupulous in seeking to ensure the accuracy of the testing by monitoring custody of the sample throughout and in selecting a laboratory of the highest repute.

Carrier could not, in the public interest, have disregarded a scientifically derived finding that Claimant was using drugs which might have impaired his sensory, mental or physical functions. Its refusal to permit Claimant to return to work was, accordingly, fully justified. Carrier is, however, entitled to disregard any contrary finding developed under conditions over which it does not have complete control. Its failure to accord weight or significance to the tests conducted by Claimant's private physician is, accordingly, of no moment.

3845-14.

AWARD

Claim denied.

E.T. Herbert

E.T. Herbert, Neutral Member

W.L. Allman, Jr.

W.L. Allman, Jr., Carrier Member

D.D. Bartholomay

D.D. Bartholomay, Employee Member

Date: April 13, 1987