

PUBLIC LAW BOARD NO. 4061

Case No. 29  
Award No. 29

Parties to dispute:

United Transportation Union

and

Norfolk & Western Railway Company

Statement of claim:

Claim made for and on behalf of Decatur yardman J. Flagg for reinstatement to the service with pay for all time lost, including time lost to attend the investigation held May 27, 1986, and his record cleared of this incident, account failure to comply with instructions to provide a drug screen urinalysis on May 7, 1986.

Opinion of Board:

Claimant was found positive on a drug urinalysis following a physical examination in 1985. He complied with the requirement of a negative test within 45 days and was conditionally returned to service. In May, 1986, he was marked off. He was called for a train and immediately upon reporting was notified that he was to be given a urine screen test.

The organization contends that the call for service was subterfuge, that the Carrier, in fact, had no shortage of men and that the call was contrived, an over-reaction to a notice from the medical office to conduct the test.

There is an indication that was the case. However, the evidence is not conclusive. The Carrier has an obligation to execute the drug program fairly, a program held reasonable and the execution by an overzealous local official should not impair its effectiveness. In this case we are additionally shown an arbitrary attitude by the investigating officer whose decision to disallow certain testimony makes the question of reversible error a reasonable one for the organization to raise.

However, the claimant refused to take the test.

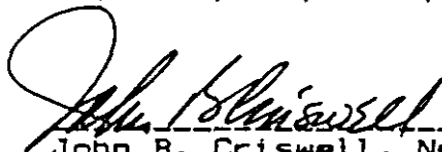
Findings:

That the agreement was not violated.

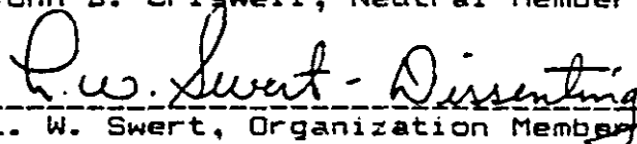
Award:

Claim denied.

Dated this 15th day of April, 1987, at St. Louis, Mo.



John B. Criswell, Neutral Member



L. W. Swert, Organization Member



E. M. Martin, Carrier Member