

Public Law Board No. 4130

Parties to Dispute

International Brotherhood of Firemen	)	
and Oilers, System Council No. 6	)	Case No. 2
	)	
vs	)	Award No. 2
	)	
Norfolk and Western Railway Company	)	

STATEMENT OF CLAIM

1. That in violation of the current Agreement Firemen and Oiler Devonna M. Thorn was dismissed from all services of the Norfolk and Western Railway Company on January 24, 1986.
2. That accordingly the Norfolk and Western Railway Company be ordered to reinstate Devonna M. Thorn to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 10% annual interest. That she be reimbursed for all losses sustained account of loss of coverage under health and welfare and life insurance agreements during the time she is held out of service.

FINDINGS

The Claimant has a seniority date with the Carrier of May 1, 1979. She was furloughed on September 1, 1982. In April of 1985 the Claimant was recalled for relief work at the Bluefield, West Virginia mechanical facility of the Carrier. Pursuant to this recall the Claimant was given a physical examination and a drug screen test on April 17, 1985. On May 2, 1985 the Carrier's Medical Director notified the Claimant that the drug screen urinalysis conducted as part of her physical was positive for marijuana. In that letter the Medical Director also stated the following:

(t)he company's medical policy forbids the active employment of persons who are dependent upon or use drugs which may impair sensory, mental, or physical functions. Thus, I cannot permit you to return to service at this time.

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If you believe you will be able to meet the requirements of the company's medical policy, then another specimen of your urine will be tested at your request. You must go to your supervisor when you feel that your body has been cleared of the drugs and he will give you a physical examination form to repeat your urine drug test... (y)ou will have only two opportunities for retesting. You will not be permitted to return to service until and unless one of the two retests of your urine for marijuana and other drugs is negative.

That letter to the Claimant also included a list of Drug and Alcohol Rehabilitation Service (DARS) counselors to whom employees of the Carrier could apply for treatment. Such treatment was free of charge.

On August 1, 1985 the Carrier amended its policy relative to employees who test positive for a prohibited substance during a physical examination. The new policy was that an employee was required to supply the Carrier with a urine sample, free of such substance, within forty-five (45) days of the letter informing them of the result of the test, or that they enroll in the DARS program. Accordingly the Claimant was notified by the Carrier's Medical Director on August 29, 1985 that she had 45 days from that date to supply the Carrier with a negative urine sample or be subject to dismissal. The Carrier's Medical Director also advised the Claimant in this letter that:

(i) if you feel that you have a physical or psychological dependency on marijuana or other drugs, I urge you to seek help from one of our DARS counselors. If the DARS counselor determines that you are addicted, you may elect to enter the DARS program. If you enter the DARS program, you will not be required to provide a negative urine sample until 5 working days after you complete or leave the DARS program (as condition of employment). A list giving the names and telephone numbers of our DARS counselors is enclosed.

On October 9, 1985 the Claimant reported for a re-test. It was positive for marijuana and contained some unknown foreign substance. She then took retests on October 31, 1985 and November 20, 1985. Both of the latter tested positive also for marijuana and the October 31, 1985 test also tested positive for some other foreign substance.

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On December 3, 1985 the Claimant was notified to attend an investigation to determine facts and place responsibility, if any, in connection with her alleged violation of the Carrier's policy relative to drug testing. In effect, she was charged with not providing the company with a negative urine sample within forty-five (45) days of the Medical Director's notice dated August 29, 1985 and/or absent that, with not entering the Carrier's DARS program. After request for postponement by the Organization the investigation was held on January 9, 1986. On January 24, 1986 the Claimant was advised that she had been found to be in violation of company policy and she was dismissed from service. This discipline was unsuccessfully appealed by the Organization up to and including the highest Carrier officer designated to hear such before this case was docketed before this Public Law Board for final adjudication.

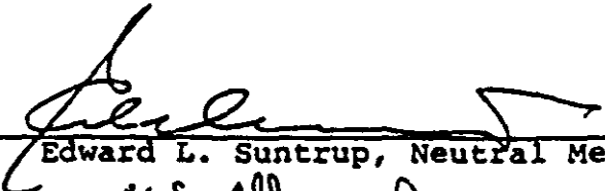
A review of the record before the Board shows that the Claimant was duly informed of the Carrier's policy with respect to drugs and that she was unable to furnish a negative urine sample within the time-frame specified by that policy and that she did not avail herself, from evidence of record, of the Carrier's DARS' counselors. There is sufficient substantial evidence of probative value, therefore, to warrant the conclusion that the Claimant was guilty as charged. Substantial evidence has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. v Labor Board 305 U.S. 197, 229). On the record taken as a whole the instant claim cannot be sustained.

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AWARD

Claim denied.



Edward L. Suntrup, Neutral Member

W. L. Allman, Jr., Carrier Member

D. W. Anderson, Jr., Employee MemberDate: 10/22/86