

BEFORE PUBLIC LAW BOARD NO. 4217

INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS  
v.  
NORFOLK AND WESTERN RAILWAY COMPANY

Case No. 2

Findings:

Claimant K.R. Piatt was employed as a laborer by the Carrier, Norfolk and Western Railway Company, at its locomotive facility in Portsmouth, Ohio. Claimant was furloughed from November 13, 1984, until his recall on May 8, 1986. Claimant was required to undergo a physical examination, including urinalysis, as part of the recall procedure. The urinalysis results showed traces of substances indicating marijuana use. By letter dated May 27, 1986, Carrier's Medical Director notified Claimant of the urinalysis results and informed him that he must either submit a negative urine sample within 45 days of the letter or enter Carrier's Drug and Alcohol Rehabilitation Service (DARS). On July 28, 1986, Carrier's Medical Director notified the General Foreman that Claimant had failed to submit the required sample within the time limit. On August 4, 1986, Claimant was notified to appear at a formal investigation:

to determine your responsibility in connection with your failure to comply with the instructions of the Carrier's Medical Director, Dr. George W. Ford, and company policy as instructed in his letter dated May 27, 1986 addressed to you, in that you did not provide a negative urinalysis sample or enter Carrier's DARS Program within 45 days of Dr. Ford's May 27, 1986 letter.

After a postponement, the investigation was held on September 10, 1986; as a result, Claimant was dismissed from service. The Organization then filed a claim on Claimant's behalf, challenging his dismissal.

The Organization contends that Carrier's dismissal of Claimant

was arbitrary, capricious, and unjust. The Organization asserts that although Carrier has the right to set certain standards and rules, these rules must be reasonable and employees must be able to comply with them under ordinary circumstances. Carrier based its action on an unreasonable interpretation and application of a company policy. The Organization points out that when the examination and testing took place, Claimant had been furloughed for a long period of time and had no reason to expect a call to duty.

The Organization also argues that the accuracy of urinalysis tests is questionable. A positive result could have been caused by many substances other than marijuana. Moreover, even if Claimant had used marijuana, Claimant should not have been dismissed, but held out of service until a negative test was completed. The Organization therefore argues that Carrier unreasonably applied its policy.

In addition, the Organization contends that it is absurd to apply the DARS program policy without reasonable cause, and there was no reasonable cause in this case. The Organization points out that the DARS program is provided for employees who have a dependency on drugs or alcohol. The Organization argues that Claimant has no such dependency. The Organization contends that it is not the purpose of the DARS program to counsel persons who are not dependant on drugs or alcohol; if the program were burdened with unnecessary work, its effectiveness would be destroyed. The Organization also argues that the record shows no evidence of any impairment in Claimant's work performance.

The Organization finally contends that Claimant did not submit to a second urine test within 45 days because to do so may have jeopardized his construction job in Tennessee. Claimant was working

seven day per week at this job; he already had lost money and a pay increase because of the time necessary to report for the first examination. Claimant felt he could not afford another monetary loss for a temporary position with Carrier. Moreover, Claimant was not completely familiar with the procedure involved with Carrier's drug policy and that he was required to have another urine test within 45 days. The Organization therefore argues that the claim should be sustained.

The Carrier contends that Claimant did not comply with the instructions of Carrier's medical officer and therefore was properly dismissed. At the hearing, Claimant admitted that he received the letter about Carrier drug policy and instructions from Carrier's medical officer. Moreover, Claimant admitted that he did not follow the instructions. The Carrier points out that failure to follow the instructions of the medical officer has been held to be a dismissable offense on this property.

Carrier further argues that the length of Claimant's furlough is not an excuse for Claimant's failure to comply with the medical officer's instructions. As long as he was on the seniority roster, Claimant was required to remain ready to fill any vacancy. The governing rule provides that if an employee fails to return to service upon recall, the employee loses his or her seniority. Moreover, Claimant's fear of losing another job does not excuse Claimant's failure to submit to a second test. Carrier further points out that there is no evidence in the record showing that Claimant's urine test was inaccurate.

Carrier next argues that under the circumstances, the assessed

discipline was proper. Carrier asserts that Boards repeatedly have held that discipline shall not be overturned where a carrier has not abused its discretion and the action is taken with cause. Carrier asserts that Claimant received a fair and impartial hearing; the testimony of the witnesses, including Claimant, substantiated the charge; substantial evidence supports the discharge; and the assessed discipline was not harsh or excessive.

Finally, the Carrier contends that the Organization's remedy claim is excessive. The discipline rule provides for compensation for time lost; Carrier argues that the rule does not support a claim for compensation for fringe benefits. Moreover, Boards have recognized the impropriety of remedies in excess of what is provided in the controlling agreement. Carrier therefore contends that the claim should be denied in its entirety.

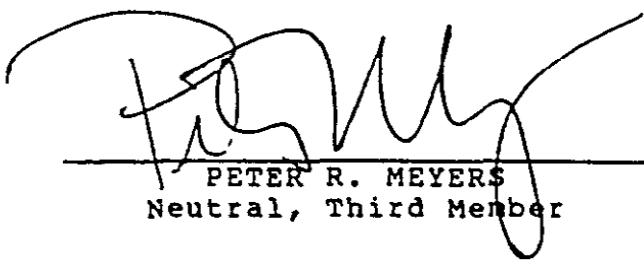
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the Carrier's finding that the Claimant was guilty of failing to comply with the Carrier's instructions. Claimant was recalled from furlough in Ma 1986, and the Carrier's policy required that he submit to a urinalysis when he was recalled. The urinalysis showed traces of marijuana, and Claimant was given 45 days to report and submit a negative urine sample. The letter requiring the test is very explicit, and Claimant admitted that he had received the letter and did not comply with its requirements.

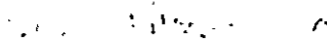
Thus, the record is clear that the Claimant had the opportunity to report and produce another specimen in order to be allowed to return to work. He failed to comply with the Carrier's instructions and was terminated. Failure to comply with instructions of the Medical Director

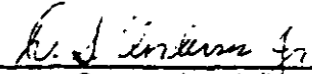
has been held to be a dismissable offense. This Board sees no reason to set aside the action of the Carrier.

Award:

Claim denied.

  
\_\_\_\_\_  
PETER R. MEYERS  
Neutral, Third Member

  
\_\_\_\_\_  
Carrier Member

  
\_\_\_\_\_  
Organization Member

Date: June 1929