

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

V.

BURLINGTON NORTHERN RAILROAD

STATEMENT OF CLAIM

Sectionman R. F. Mohlmann shall be allowed forty-four (44) hours of pay at his straight time rate as a result of being improperly and unjustly withheld from service July 1, 1985 to July 8, 1985 (System File T-M-570/CMWB 85-10-17B)."

FINDINGS

The sequences of events in this matter is important for a decision.

February 19, 1984	Mr. Mohlmann voluntarily entered a medical unit for treatment of chemical dependency.
March 19, 1984	Mr. Mohlmann released from the medical unit.
March 29, 1985	Mr. Mohlmann underwent a routine medical examination.
April 18, 1985	Based upon positive test results for marijuana in his system, Mr. Mohlmann was requested by Carrier Medical Officer to contact the Employee Assistance Counselor within seven (7) days.
May 1, 1985	Employee Assistance Counselor advised the Medical Officer that Mr. Mohlmann had not made contact.
June 7, 1985	Mr. Mohlmann had not yet contacted Employee Assistance Counselor; Medical Officer asked Division Superintendent to remove Mr. Mohlmann from service and to place Mr. Mohlmann on medical leave.
June 21, 1985	Division Superintendent sent Mr. Mohlmann a certified letter notifying him of his removal from service and placement on medical leave.
June 25, 1985	certified letter refused

July 1, 1985

Mr. Mohlmann removed from service

July 8, 1985

Following meeting with Employee Assistance Counselor, Mr. Mohlmann returned to service.

There is no evidence in the record of this case that Mr. Mohlmann was at any time disciplined. To the contrary, it is clear that the Carrier was dealing with the test results as a medical matter. Since only a little over a year had passed between Mr. Mohlmann's release from the treatment unit and the time of the urinalysis test, the Carrier had reasonable grounds for concern when Mr. Mohlmann tested positive for marijuana metabolites in his system.

According to the Organization:

"Inasmuch as the Claimant did not have a chemical dependency problem and since he had no questions concerning the results of his physical examination, he did not contact the Employee Assistance Counselor." (Organization's submission)

Mr. Mohlmann took it upon himself to disregard the Chief Medical Officer's request that he contact the Employee Assistance Counselor. If Mr. Mohlmann disputed the test results and the conclusion based upon those results, Mr. Mohlmann should have initiated a Rule 41 review by a neutral medical authority.

For reasons not made clear in the record of the case, the Carrier permitted Mr. Mohlmann to work between April 18th and July 1st. Between April 18th and June 7th, no action was taken by the Chief Medical Officer to compel compliance with his request. Additionally, almost a month passed between the date the Chief Medical Officer requested Mr. Mohlmann's removal from service and his actual removal. This record is at variance with the Carrier's commitment to safe operating practices. The Carrier should not have delayed as long as it did in confronting Mr. Mohlmann with his obligation to either comply with the Chief Medical Officer's request or to initiate a Rule 41 review. Nevertheless, it must be stated again, in April 1985, the Carrier had reasonable grounds to request that Mr. Mohlmann contact and cooperate with the Employee Assistance Counselor.

The failure of the Carrier to act in a timely manner does not relieve Mr. Mohlmann of his basic responsibility in this matter. Mr. Mohlmann brought about his loss of income (44 hours) because he chose to disregard the April 18th request from the Chief Medical Officer.

Given Mr. Mohlmann's medical history of chemical dependency, the review in July 1985 was not irrelevant, even though it certainly was not timely. The Organization has not established a convincing argument for the reimbursement of Mr. Mohlmann. His conduct prior to July 1st resulted in his removal from service and placement on medical leave.

AWARD

Claim denied

R. L. MillerRonald L. Miller  
Chairman and Neutral MemberMaxine M. TimbermanMaxine M. Timberman  
Carrier MemberKarl P. KnutsenKarl P. Knutsen  
Organization Member1 June 1988

Date