

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 13

Case No. 13

System Docket No. BMW-E-D-114

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Scott Irwin was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Scheduled Agreement.

(b) Claimant Irwin shall be reinstated into Carrier's service with all seniority entitlements and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule "K" of the Scheduled Agreement.

FINDINGS

The Claimant was recalled from furlough and submitted to a return-to-work physical examination on April 24, 1989. The examination included a routine drug screen by urinalysis. The test proved positive for THC metabolite, the active ingredient unique to marijuana. In accordance with the Carrier's Drug and Alcohol

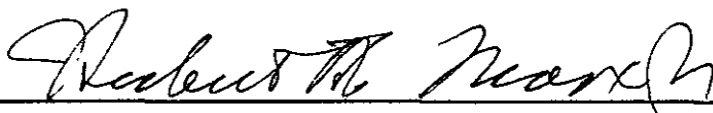
Policy, the Claimant was directed to rid his system of prohibited drugs and either enter the Employee Assistance Program or re-test clean within 30 days. Proof of delivery of the letter was received.

The Claimant exercised neither option and was subsequently subject to an investigative hearing for his failure to comply. The Claimant failed to attend the hearing. Following the hearing, the Claimant was dismissed from service.

The Board finds the Carrier's action fully in accord with its established procedures. This is not affected by the Claimant's failure to attend the hearing and provide testimony in his defense. The resulting dismissal was inevitable.

A W A R D

Claim denied.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



P. A. ENGLE, Carrier Member

NEW YORK, NY

DATED: 7-7-92