

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 3

Case No. 3

Carrier File No. BMW-E-D-104

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Oscar Bellamy 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 Bellamy 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.

F I N D I N G S

The Claimant returned from a two-month medical leave of absence and was subject to the usual return-to-duty physical examination, which routinely included a drug screening. The Claimant tested positive for cocaine.

Under the Carrier's established Drug and Alcohol Testing

Policy, the Claimant had been advised that he would be required to enter the Carrier's Employee Assistance Program or provide a negative specimen within 30 days, in the event of an initial positive finding.

The Claimant chose the latter alternative and again tested positive for cocaine when subject to re-examination. He was then subject to an investigative hearing and, thereafter upon full review of the test procedures, was dismissed from service.

The propriety and legitimacy of the Carrier's Drug and Alcohol Testing Policy has been supported in numerous previous Awards, and this further review of the Policy is unnecessary here. Despite allegations to the contrary by the Organization, the record demonstrates no failure to follow proper laboratory procedures, including the use of confirmatory tests.

Under these circumstances, the penalty of dismissal is appropriate, as has been found in numerous similar instances. It is further noted that the Claimant had been assessed four disciplinary suspensions for absenteeism within the previous two and one-half years.

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: *May 16, 1991*