

PUBLIC LAW BOARD NO. 6394

Award No. 3

Parties to Dispute:

Brotherhood of Maintenance of Way Employees
(Consolidated and Pennsylvania Federations)

and

Norfolk Southern Railway Company

Statement of Claim:

Claim on behalf of P. R. Kantner, Jr. for reinstatement with seniority and all other rights unimpaired and pay for all time lost as a result of his dismissal from service following a formal investigation on December 20, 1999, for conduct unbecoming an employee for submitting an adulterated urine sample during a drug test on November 12, 1999, which constitutes refusal to test under Norfolk Southern's medical policy on drugs.

(Carrier File: MW-HARR-99-28-BB-498)

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

Claim disposed of as follows: Claimant was dismissed for submitting an adulterated urine specimen for a drug test on November 12, 1999. The documentary evidence from the testing laboratory and Carrier's medical review officer reveal that Claimant's urine had a nitrate concentration in excess of 1000 ug/ml, which was consistent with certain commercial products intended to interfere with the detection of marijuana metabolites in the urine. Although Claimant sought to explain the high nitrate level as attributable to food and/or medicine, the evidence established that no ingested materials could produce a nitrate level as high as what was found in Claimant's urine. Accordingly, we find that Carrier proved the charges by substantial evidence.

The severity of the penalty of dismissal was hotly contested. Carrier contends that dismissal was

not arbitrary, capricious or excessive. The Organization contends that it was excessive. Both parties have submitted awards in support of their positions. A review of the awards confirms that submitting an adulterated urine sample is an extremely serious offense that usually justifies dismissal. However, each case must be examined on its peculiar facts and under very limited circumstances, primarily where the claimant is a long-term employee with an otherwise outstanding work record and where other special circumstances are present, dismissal may be an excessive punishment.

The record in the instant case reveals that Claimant had sixteen years of service at the time of his dismissal and an otherwise excellent record. The Assistant Division Engineer candidly testified concerning Claimant:

He is a very good employee. I have several supervisors that are shocked by this hearing today, investigation. In the short time he has been off, he has been missed.

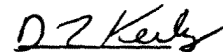
Under the particular circumstances presented, the Board finds that Claimant should be given one last opportunity to demonstrate that he can be an honest and productive employee who follows all rules. The Claim shall be sustained to the following extent. Claimant shall be reinstated to service with seniority unimpaired, but without compensation for time held out of service. Reinstatement shall be conditioned on Claimant passing any reasonable physical exam, including a drug screen, that Carrier may require and shall be on a last chance basis. Any further rule violations in the two years following reinstatement shall be grounds for Claimant's permanent dismissal. Carrier is ordered to make this award effective within thirty days of the date two members of the Board affix their signatures hereto.



M. H. Malin
Chairman and Neutral Member



P. K. Geller, Sr.
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois, June 15, 2001.

CONCUR THAT ADULTERATION IS A
DISMISSAL OFFENSE, BUT DISSENT
TO REINSTATEMENT ON BASIS OF
THE REFERENCED SPECIAL
CIRCUMSTANCES.