

AWARD NO. 359
UTU CASE NO. 10,057
CARRIER NO. TR-FKT-86-123

PUBLIC LAW BOARD NO. 94

PARTIES) NORFOLK AND WESTERN RAILWAY COMPANY
TO)
DISPUTE) UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: Appeal of Brakeman N. L. Berry against dismissal from service account of his alleged responsibility in connection with failing to comply with instructions to submit to a drug screen and urinalysis as per written instructions of March 27, 1986. Formal hearing held April 16, 1986.

FINDINGS: This Public Law Board No. 94 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant testified during a formal investigation that he sometimes goes into a coma-like sleep and cannot be awakened. That information was provided to the Carrier's Medical Director who determined that it would be necessary for the claimant to submit to a complete physical examination to determine his fitness for duty. The claimant and his Union representative agreed to the physical examination.

On March 14, 1986 the claimant reported to the designated physician and submitted to the examination with the exception of the drug screen urinalysis. The claimant refused to provide a urine specimen for that purpose. On March 27, 1986 the Carrier learned that the claimant had refused to submit the specimen and sent a letter to the claimant on that date instructing him to report for a drug screen urinalysis within five days from receipt of the letter in order to complete the physical examination.

The claimant did not comply with these instructions and was cited for a formal investigation by letter dated April 7, 1986. The claimant was charged with failure to comply with the instructions in the Superintendent's letter of March 27, 1986. Pursuant to the investigation the claimant was found guilty and was dismissed from the service of the Carrier.

The Carrier points up that the claimant was well aware that all physical examinations required by the Carrier included the drug screen urinalysis. The Eighth Circuit Court of Appeals had addressed this specific issue and sustained the position of the Carrier.


The Union contends that the claimant was confused and did not realize that he was required to take the drug screen urinalysis test. The Union also contends that the hearing was not held within ten days of the occurrence.


The Board has examined the evidence of record and finds that the Carrier was not aware that the claimant refused to take the drug screen urinalysis test until March 27, 1986. Therefore, the Board finds there is no violation of the time limit, Rule 49(C).

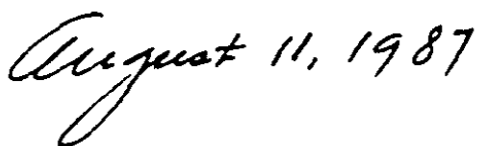
The claimant was not dismissed for refusing to take the drug screen urinalysis test; he was dismissed for refusal to comply with the Carrier's instructions dated March 27, 1986. The evidence indicates the claimant was aware that all physical examinations required by the Carrier included the drug screen urinalysis test.

On the foregoing basis there is no justification for setting the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman


Union Member




Carrier Member