

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 178

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of R. L. Sanchez to be reinstated to service and to be made whole as a result of a dismissal from service following a formal investigation concerning his failure to comply with the Policy on Alcohol and Drugs and the instructions of the Medical Director in that he tested positive for marijuana on May 6, 2008.

(Carrier File MW-ROAN-08-04-LM-290)

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 under Public Law 89-456 and has jurisdiction of the parties and subject matter.

AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

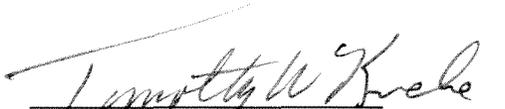
On January 25, 2007, Claimant refused an instruction to submit to a random drug screen as required by federal regulations in connection with his position which required a commercial driver's license (CDL). On January 31, 2007, Claimant signed a waiver of investigation and accepted a seven-day suspension. He also agreed to be subject to random follow-up testing for five years and agreed that any further positive test would be grounds for his dismissal. In a May 9, 2007, letter, Carrier's Director Medical Services reminded Claimant that any future positive test would result in his dismissal. However, on May 6, 2008, Claimant tested positive for marijuana.

The only real issue in dispute results from the fact that the chain of custody document was not signed by Claimant when he provided the urine specimen for the May 6, 2008, test. The test collector submitted an affidavit where she attested that she neglected to have the donor, i.e., Claimant, sign the chain of custody form. She further attested that the employee was identified to her, the specimen was collected, labeled and sealed in accordance with federal requirements and that the employee did not refuse to sign the form. Claimant corroborated the affidavit, testifying that he was never asked to sign the form.

Federal regulations provide that the omission of an employee's signature from the certification statement is a correctable flaw, unless the employee's failure or refusal to sign is noted on the form. 49 C.F.R. § 40.203(d)(1). Accordingly, we find that Claimant's failure to sign the chain of custody form did not invalidate the test. The claim is denied.



M. H. Malin
Chairman and Neutral Member



T. W. Kreke
Organization Member

Oct 5, 2009



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on September 24, 2009.