

**SPECIAL BOARD OF ADJUSTMENT NO. 1048**

**AWARD NO. 180**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim on behalf of C. A. Templin for reinstatement to service with all rights and privileges lost as a result of his dismissal from service following a formal investigation concerning 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 July 24, 2008.

(Carrier File MW-DECR-08-37-LM-433)

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.

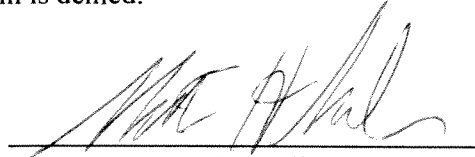
**AWARD**

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

On July 11, 1994, Claimant tested positive for marijuana and was referred to Carrier's DARS program for rehabilitation. Claimant completed the program and returned to service. On April 5, 1995, Carrier's Director Medical Services wrote Claimant reminding him that any future positive test would subject him to dismissal and would not be eligible for further reinstatement under the DARS Program.

On July 24, 2008, Claimant again tested positive for marijuana. Claimant admitted that he frequently used marijuana. He testified that he is HIV positive, that the drug regimen he has to follow takes away his appetite causing him weight loss and that he uses marijuana to restore his appetite. Claimant also admitted to the Track Supervisor that he realized his choice to use marijuana endangered his railroad career.

Our role is not to pass judgment on the choice Claimant made. Our role is limited to determining whether Carrier violated the Agreement when it dismissed Claimant. Clearly there was no Agreement violation. Accordingly, the claim is denied.



M. H. Malin  
Chairman and Neutral Member



T. W. Kreke  
Organization Member

OCT 9, 2009



D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on September 24, 2009.