

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 128

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of R. C. Williams for reinstatement with seniority, vacation and all other rights unimpaired and pay for time lost as a result of his dismissal from service following a formal investigation on September 26, 2000, for failure to follow the instructions of the Medical Director contained in a letter dated April 11, 2001, and failure to cooperate with the rehabilitation required by DARS after being withheld from service as a result of a positive drug test conducted on April 2, 2001.

(Carrier File MW-HARR-01-13-SG-282)

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.

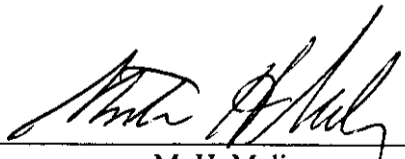
This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

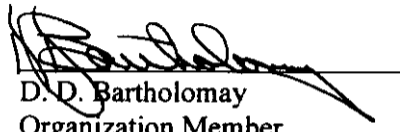
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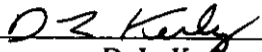
After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The record reflects that Claimant tested positive for marijuana in a return to work physical. Claimant was directed to contact Carrier's Drug and Alcohol Rehabilitation Service (DARS) Program within seven days. Claimant did so and scheduled an assessment interview with a DARS counselor. Although Claimant kept the appointment, he did not cooperate with the counselor who postponed the session and advised Claimant to return when he was prepared to cooperate. Claimant scheduled another appointment but failed to show for the meeting. Despite subsequent written communication encouraging him to participate in the DARS program and warning him that failure to do so would result in a report to Carrier of his lack of cooperation, Claimant did not respond. The record further reflects that Claimant was notified by certified mail of the date of investigation and, despite three attempts by the Postal Service to deliver the certified letter, Claimant failed to claim the letter. Nevertheless, the investigation was postponed when Claimant failed to appear. Carrier notified Claimant by certified mail of the rescheduled date for the investigation and Claimant again failed to claim the letter and failed to appear at the hearing.

The hearing was held in absentia. The undisputed evidence established that Claimant failed to cooperate with the DARS program. We find that Carrier proved the charge by substantial evidence, that there is, under the circumstance, no basis for overturning the discipline and that the penalty of dismissal was not arbitrary, capricious or excessive. Accordingly, the claim is denied.



M. H. Malin
Chairman and Neutral Member

D. D. Bartholomay
Organization Member

D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on October 11, 2002