

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1049

JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
E. N. JACOBS, JR., CARRIER MEMBER
RICHARD A. LAU, ORGANIZATION MEMBER

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK SOUTHERN RAILWAY COMPANY

Award No. 64
Case No. 64

Date of Hearing - October 17, 1996
Date of Award - April 21, 1997

Statement of Claim:

1. The dismissal of Laborer J. C. Hawke, Jr., for alleged insubordination when he did not return to the doctor's office on June 3, 1994, was without just and sufficient cause, capricious and excessive.
2. Laborer J. C. Hawke, Jr., shall now be reinstated to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

Carrier File MW-HSNC-94-02

FINDINGS:

Special Board of Adjustment No. 1049, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

As part of a back-to-work physical Claimant was required to provide a urine sample for a drug screen. While in the doctor's office, Claimant contended that he was unable to urinate. After more than an hour's delay, during which time Claimant consumed several glasses of water, he still failed to provide a specimen. The doctor advised Claimant to go to lunch and return between 1:00 and 2:00 p.m., so that his urine could be collected then. A Carrier Supervisor, present at the time, reminded Claimant as he was leaving that he had only 40 minutes to eat and then return, so that he could be tested. A nurse in the doctor's office also told him that he would have to return after lunch to provide a sample for testing. Claimant left the facility and never returned. He was cited to attend an investigation on a charge that he had failed to follow

instructions. Following an investigation on the charge, Claimant was dismissed from Carrier service.

The Organization has appealed the dismissal on a variety of grounds. Mainly it questions whether Claimant was given explicit instructions to return to the doctor's office after lunch. It contends that the instructions were that if after eating lunch Claimant was able to provide a urine sample, he should return between 1:00 and 2:00 p.m., and do so. Since Claimant could not provide a sample during that time frame, he was not required to return.

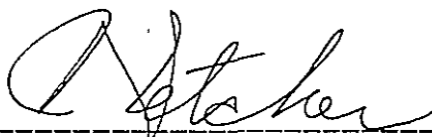
Upon review of the transcript of the investigation, the Board concludes that Claimant, indeed, was positively instructed to return to the doctor's office between 1:00 and 2:00 p.m., on June 3, 1994, to provide a urine sample. His contention that the instructions to return were conditional on his ability to urinate cannot be credited. The Board believes that both the doctor and the nurse, repeatedly in the past, have been exposed to claims of "shy bladder" by individuals required to present themselves for drug screens. Usually these individuals suffer the "shy bladder" malady because they know that a sample taken that day will test positive for a prohibited substance. They claim to be suffering from a "shy bladder" affliction with the hope of securing a delay, knowing that abstinence and time will provide a negative specimen.

Because of this exposure to individuals that claim that they are unable to provide a sample, it is highly unlikely that the doctor and/or the nurse would suggest that Claimant's return that day be conditional on his ability to urinate, as he has contended. Urine testing would be critically compromised if the sample could be provided at the convenience of the candidate being tested, and not at the time it was required to be provided. Even a delay of a day or two could result in a negative sample, when the sample would have tested positive several days earlier. This would result in a return to duty of an individual that was using prohibited substances, a result Carrier need not tolerate.

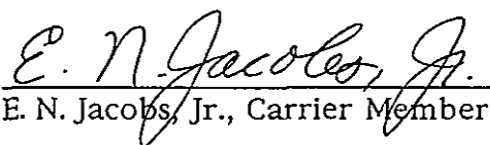
The discipline assessed will not be disturbed.

A W A R D

Claim denied.



John C. Fletcher, Chairman & Neutral Member


E. N. Jacobs, Jr., Carrier Member
Richard A. Lau, Employee Member

Dated at Mt. Prospect, Illinois., April 21, 1997