

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4544

BROTHERHOOD RAILWAY CARMEN DIVISION
TRANSPORTATION COMMUNICATIONS
INTERNATIONAL UNION

and

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

Docket No. 34
Award No. 34

John C. Fletcher, Chairman & Neutral Member
Richard A. Johnson, Organization Member
Joan M. Harvieux, Carrier Member

August 14, 1992

STATEMENT OF CLAIM:

1. Carman Levi Spencer was unjustly dismissed from service on May 17, 1991 following investigation held on May 13, 1991 wherein he was erroneously charged with a failure to comply with instructions and Company Policy as specified in John Sizemore's letter of November 3, 1990.

2. Carman Levi Spencer was not allowed a fair and impartial hearing in that Carrier did not comply with Rule 26(a), 26(b) and 26(c).

3. That the Chicago and North Western Transportation Company be ordered to compensate Carman Levi Spencer all lost wages from the date of his dismissal to the date he is returned to service, plus 6 % interest in accordance with Rule 26.

FINDINGS:

Public Law Board No. 4544, 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, 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.

Claimant entered Carrier's EAP program under Carrier's Alcohol and Drug Use Policy. As a participant in the program he agreed to adhere to a number of conditions to ensure that he was fulfilling its requirements. On

April 24, 1991, Claimant submitted a urine sample which confirmed positive for PCP. As a result of this positive test he was removed from service and cited to attend an investigation. Claimant, while denying that he was using drugs, did in his testimony at his investigation admit that he came into "incidental contact with" PCP. He further indicated that failed to provide another urine sample a week following the April 24, 1991 test, as had been requested. Following the conclusion of the investigation, Claimant was discharged.

Examination of the investigation transcript discloses with certainty that Claimant did not fulfill the commitment he made when he entered Carrier's EAP program. Further, his procedural and due process rights, as conveyed by the Agreement, were not breached in his investigation and resulting appeal. Accordingly, the discipline assessed will not be disturbed. Employees who are permitted to participate in Carrier's drug and alcohol EAP must understand that they must rigidly meet the expectations of the program in order to avoid termination. Anything less, seriously compromises the entire situation.

The Claim is without merit, it is denied.

A W A R D

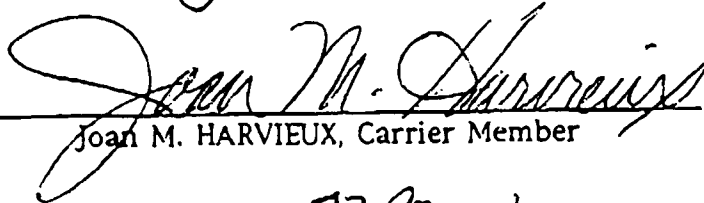
Claim denied.



John C. ELETCHER, Chairman & Neutral Member



Richard A. JOHNSON, Organization Member



Joan M. HARVIEUX, Carrier Member

Dated at Mt. Prospect, IL, this 23RD Date of November, 1992