

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13740

Docket No. 13635

03-2-01-2-42

The Second Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

**(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway**

STATEMENT OF CLAIM:

- “1. That in violation of the current Agreement, Rule 30 in particular, Towerman Steven G. Swanson was unjustly dismissed from the service of the Burlington Northern/Santa Fe Railroad company (former Burlington Northern Railroad Company) following an investigation held on May 26, 2000.**
- 2. That the investigation held on May 26, 2000 was not a fair and impartial investigation under the terms required by the rules of the current Agreement and that the dismissal of Steven G. Swanson was unjust, unwarranted and excessive.**
- 3. That accordingly the Burlington Northern/Santa Fe Railroad Company be directed to restore Electrician Steven G. Swanson to its service and be made whole for all lost wages, rights, benefits and privileges which were adversely effected by his unjust suspension and dismissal. Further, that all record of the charges, investigation and discipline be removed from Electrician Steven G. Swanson’s personal record.”**

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On June 12, 2000 the Carrier dismissed the Claimant from its service. As a result of an Investigation held on May 26, 2000 the Carrier found that the Claimant violated Carrier Rule 7.9 on May 4, 2000 when the Claimant adulterated his urine during a FRA mandated drug test.

The facts in this case are not in dispute. In fact, the Claimant admitted his guilt at the Investigation. Rule 7.9 reads as follows:

“7.9 Dismissal. Any one or more of the following conditions will subject employees to dismissal:

More than one confirmed positive test either for any controlled substance or alcohol, obtained under any circumstances during any ten (10) year period.

A single confirmed positive test either for any controlled substance or alcohol obtained under any circumstances within three years of any ‘serious offense’ as defined by the Burlington Northern Santa Fe ‘Policy for Employee Performance Accountability.’

Failure to abide by the instructions of the Medical & Environmental Department and/or Employee Assistance Program regarding treatment, education and follow-up testing.

Failure to provide a urine or breath alcohol specimen without a valid, verified medical explanation.

Adulteration, substitution or dilution of urine samples.

Possession of alcohol, controlled substance, illegally obtained drugs, adulterant substance, or drug paraphernalia on BNSF property obtained under any circumstances as follows:

- 1. within 3 years of any 'serious offense' as defined by the Burlington Northern Santa Fe 'Policy for Employee Performance Accountability,' or**
- 2. within 10 years of a confirmed positive test either for any controlled substance or alcohol, or**
- 3. involving a criminal conviction."**

The Organization argues that the discipline assessed was excessive in this case. The Claimant admitted he smoked marijuana off duty celebrating a hole-in-one while golfing. When notified of the test the Claimant panicked and got a substance from his wife to mask the urine. It is not explained how the Claimant was notified of the FRA mandated test and given time to get a masking agent.

The Claimant had ten years of service at the time of the incident. This offense was the first discipline in those ten years. Based on the facts and the circumstances in this case the Board finds the discipline to be excessive. The Claimant shall be reinstated with seniority unimpaired but without pay for the time lost. The Claimant must be approved by the Carrier's Employee Assistance Program and must agree to short notice drug and alcohol testing before returning to work.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 30th day of June 2003.