

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37255
Docket No. SG-38191
04-3-04-3-109

The Third Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Burlington Northern and Santa Fe Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe (BNSF):

Claim on behalf of W. J. Sneberger for his immediate return to service and payment made for any and all lost wages, including overtime beginning December 27, 2002, when Carrier wrongfully removed him from service and continuing until he is returned to service; and remove any and all mention of the investigation and discipline assessed in this matter from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it failed to provide a fair and impartial investigation and unfairly issued excessive and unwarranted discipline against the Claimant as a result of an investigation held on January 23, 2003. Carrier’s File No. 35 03 0033. General Chairman’s File No. 03-016-BNSF-188-SP. BRS File Case No. 12830-BNSF.”

FINDINGS:

The Third 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.

The Claimant was employed on June 20, 2002, as an Assistant Signalman. On September 16, 2002, he tested positive for a controlled substance as a result of an FRA random test. The Claimant waived the right to an Investigation and agreed to enter the Carrier's Employee Assistance Program. The Carrier suspended him from service and reinstated him on November 19, 2002. He was required to take a follow-up drug test and tested positive on December 17, 2002.

A review of the record indicates that in his short tenure with the Carrier the Claimant demonstrated that he was unwilling or unable to comply with the Carrier's drug and alcohol policy, even after being given a second opportunity to do so. The Claimant violated the conditions set forth by the Carrier with full knowledge that it would result in his discharge. See Public Law Board No. 4998, Award 50.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of October 2004.