

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36688
Docket No. MS-36423
03-3-00-3-630**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (National Conference of Firemen and Oilers
(Tuscola & Saginaw Bay Railway Company)

STATEMENT OF CLAIM:

- "1. That in violation of the current working Agreement, Mr. Roy Boussouw, Signal Maintainer, was unjustly dismissed from the service of the Tuscola and Saginaw Bay Railway Company, effective December 2, 1999.**
- 2. That accordingly, the Tuscola and Saginaw Bay Railway Company be ordered to make Mr. Boussouw whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus 6% interest annually, and reimbursed for all losses sustained account of loss coverage under Health and Welfare and Life Insurance Agreements during the time he has been held out of service and remove the mark from his record."**

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.

Roy Boussouw, ("Claimant"), was employed by the Tuscola and Saginaw Bay Railway Company, Inc., ("Carrier") governed by the terms of a Collective Bargaining Agreement ("Agreement") between the Carrier and the International Brotherhood of Firemen and Oilers ("Organization").

It is not disputed that on March 3, 1997, while employed in the position of Signal Maintainer, the Claimant was removed from service and summoned to a disciplinary Hearing on charges of testing positive for cocaine and marijuana in a "probable cause" test after a driving accident on January 7, 1997 in which he destroyed a Company vehicle. On March 5, 1997, the Claimant, the Carrier and the Organization entered into a "Last Chance" Letter-Agreement, under the terms of which the Claimant waived Hearing on the March 3, 1997 charges and waived any claim to damages, admitted his culpability, and agreed to accept a disciplinary penalty of forfeiture of his seniority in the Signal craft, and random drug testing with summary termination if he ever again tested positive. Of particular relevance to the instant case, Sections 4 and 5 of that Letter-Agreement read as follows:

- "4. At the Company's discretion, Mr. Boussouw agrees to random drug and alcohol testing to be performed during his tour of duty.
5. If Mr. Boussouw is ever found to test positive for drugs or alcohol, it is agreed Mr. Boussouw will be terminated immediately, without an investigation."

Under the terms of the quoted Letter-Agreement of March 5, 1997, the Claimant was allowed to exercise his Maintenance of Way seniority and return to service without backpay. The instant matter arose when the Claimant again tested positive for cocaine during random testing on October 20, 1999. He was allowed the opportunity by Carrier's Medical Review Officer ("MRO") to challenge the results and be re-tested within five days, which he declined. Following a Hearing at which

the Claimant and his representative appeared, after being granted an adjournment due to the Claimant's illness, the Carrier terminated his employment for violation of Rule G and the terms of the Letter-Agreement of March 5, 1997. The "courtesy Hearing" granted the Claimant prior to the termination decision was hardly a model proceeding; but we find therein no fatal defect which would vitiate the Carrier's conclusion that the Claimant tested positive for cocaine on October 20, 1999 or that the Claimant was thereby subject to "be terminated immediately, without an Investigation" under the terms of his "Last-Chance" Letter-Agreement of March 5, 1997.

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 18th day of August 2003.