

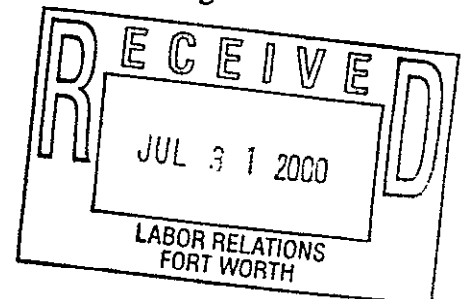
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

Organization File No. 190-1312-9919.CLM

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY

1. The Carrier violated the current Agreement when dismissing M. F. McCleery from service after he allegedly tested positive for controlled substances within a ten-year period in violation of Sections 6.2 and 12.0 of the Carrier's Policy on the Use of Drugs and Alcohol.
2. As a consequence of the Carrier's violation referred to above, Mr. McCleery shall be returned to service, the discipline shall be removed from the Claimant's personal record, and he shall be compensated for all wages lost in accordance with the Agreement



INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

FINDINGS

On June 23, 1999, the claimant, M. F. McCleery, tested positive for cocaine metabolite. This was the claimant's second positive drug test within a ten-year period. The claimant had previously tested positive for a controlled substance on January 25, 1999, and was medically disqualified by the Carrier on February 3, 1999. As a result of the claimant's second positive drug test, the Carrier dismissed the claimant from service on July 8, 1999, for violating Rules 6.2 and 12.0 of the Policy on the Use of Alcohol and Drugs.

Rule 12.0 of the Carrier's Policy on the Use of Alcohol and Drugs provides, in part, as follows:

Any one or more of the following conditions will subject employees to dismissal:

(a) A repeat positive test either for controlled substances or alcohol obtained under any circumstances. Those employees who have tested positive in the past ten (10) years will be subject to dismissal whenever they test positive a second time and shall not be eligible for reinstatement under section 5.0

The Organization contends that the Carrier violated the Agreement, in particular Rule 13 and Appendix #11, when it denied the claimant an investigation prior to his dismissal. The Organization cites that section of Rule 13 which provides: "any employee who has been in service more than sixty (60) days will not be disciplined without first being given an investigation, which will be held within thirty (30) days if held out of service." The Organization further asserts that the July 24, 1991 Letter of Understanding was not intended to be used as an instrument to dismiss employees without an investigation.

The Carrier contends that the claimant was properly dismissed from service according to the June 24, 1991 Letter of Understanding and Rule 12.0 of the Policy on the Use of Alcohol and Drugs. The June 24, 1991 Letter of Understanding provides, in pertinent part, as follows:

* * *

9.0 Dismissal

Any one or more of the following conditions will subject employees to dismissal for failure to obey instructions:

(a) A repeat positive urine test for controlled substances obtained under any circumstances.

Those employees who have tested positive in the past ten (10) years would be subject to dismissal whenever they tested positive a second time.

* * *

Effective June 1, 1991, an employee who is subject to dismissal under the aforequoted [sic] provisions of Rule 9.0 shall be notified in writing by Certified Mail, Return Receipt Requested, to the employee's last known address, copy to the General Chairman, of termination of his seniority and employment. The notice shall contain a[n] adequate statement of the circumstances resulting in the employee's termination of employment.

(Bold in text; underlining supplied).

The record indicates that the claimant tested positive for a controlled substance twice within a period of less than five months. After his initial positive test for a controlled substance, the claimant was medically disqualified from service for violating Rule 1.5 of the Maintenance of Way Operating Rules (MWOR), effective August 1, 1996. The June 24, 1991 Letter of Understanding provides that "[t]hose employees who have tested positive in the past ten (10) years will be subject to dismissal whenever they test positive a second time." Thus, as a result of his second positive drug test, the claimant is properly subject to dismissal in accordance with the June 24, 1991 Letter of Understanding and Rule 12.0 of the Policy on the

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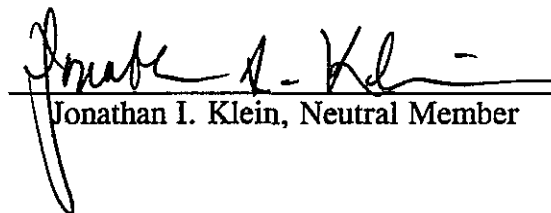
Use of Alcohol and Drugs. Moreover, the Board finds that the claimant was properly notified of the termination of his seniority and employment by the Carrier. The Board concludes that the parties agreed in the June 24, 1991 Letter of Understanding that the Carrier was not required to conduct a formal investigation prior to dismissing an employee who tests positive for a controlled substance twice within a ten (10) year period. Accordingly, the claim must be denied.

AWARD

The claim is denied.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 25th day of August, 2000.