PUBLIC LAW BOARD NO. 4244

Award No. 259
Case No. 266
Carrier File No. 14-99-0188
Organization File No. 240-13I2-9926.CLM

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. The Carrier violated the Agreement when on September 1, 1999, Mr. L. L. Chester was dismissed from service for alleged violation of Rule 6.2 and 12.0 of the Carrier's policy on the Use of Alcohol and Drugs, effective October 15, 1996, in connection with his allegedly testing positive for alcohol for a second time on August 30, 1999.

2. As a consequence of the Carrier's violation referred to above, Mr. Chester shall be reinstated with seniority, vacation, all other rights unimpaired, 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

A reasonable suspicion drug and alcohol test administered to the claimant, L. L. Chester, on March 29, 1999, revealed the presence of a significant amount of alcohol in the claimant's system. The claimant was medically disqualified by the Carrier and withheld from service as a result of violating Rule 1.5 of the Maintenance of Way Operating Rules (MWOR). The claimant was subsequently reinstated to active service on May 18, 1999, and was informed that he would be subject to dismissal as a result of a repeat positive alcohol and/or drug test for controlled substances obtained under any circumstances.

A follow-up breath alcohol test administered on August 30, 1999, revealed that the claimant tested positive for the presence of alcohol. As a result, the claimant was dismissed

from service on September 1, 1999, for violating Rule 12.0 of the Carrier's Policy on the Use of Alcohol and Drugs. For the following reasons, the Board finds that the claimant was properly dismissed from service by the Carrier.

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 Carrier contends that the claimant was properly dismissed from service according to the June 24, 1991 Letter of Understanding and Rules 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 test positive a second time.

(b) Failure to abide by the instructions Medical Department/Employee Assistance Program regarding treatment and/or follow up testing.

* * *

Effective June 1, 1991, an employee who is subject to dismissal under the aforequoted [sic] provisions of Rule 9 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; underlying supplied).

The record is clear that the claimant tested positive for alcohol twice within a period of approximately five months. The June 24, 1991 Letter of Understanding specifically 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." Additionally, the June 24, 1991 Letter

of Understanding provides that an employee will be subject to dismissal for failure to abide by the instructions of the Carrier's Medical Department regarding follow up testing. Therefore, as a result of two positive alcohol tests during a ten-year period, and his failure to follow the instructions of the Medical Department set forth in his May 18, 1999 notice of reinstatement, the claimant is subject to dismissal in accordance with the Carrier's rules. Moreover, the Board finds that the claimant was properly notified, in accordance with the June 24, 1991 Letter of Understanding, of his dismissal by the Carrier. By that letter of understanding, the parties agreed that the Carrier was not required to conduct a formal investigation prior to dismissing an employee such as the claimant who tests positive a second time for a controlled substance within a ten (10) year period. For each of these reasons, 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 17th day of January, 2000.