

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 20

Carrier File No. 1MWB 89-02-02D

Organization File No. S-P-407

STATEMENT OF CLAIM

Claim on behalf of B. A. Vandenberg, Machine Operator on Seattle Regional Steel Gang #1, who was dismissed from service of the B.N. RR, effective September 6, 1988 as the results (sic) of the Investigation held August 31, 1988 for the alleged violation of Rule G.

This Claim is to return Mr. Vandenberg to service of the B.N. RR Co. with pay for all time lost, the removal of this Investigation from his personal records, and for all seniority lost that he could have received had he been working.

F I N D I N G S

Following an investigative hearing, the Claimant was dismissed from service for violation of Rule G while employed as a Machine Operator on Steel Gang No. 1 on August 11, 1988. The Claimant was one of 33 members of the Steel Gang who were directed to undergo urinalysis drug testing under the circumstances reviewed in Award No. 19, the Findings of which are incorporated herein by reference.

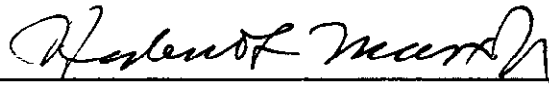
The single difference involving this Claimant is that the Carrier contends that the urine sample initially provided on August 11, 1988 was "diluted", and a second test was required on August 15, 1988, which provided a positive result for cocaine. The Board finds no error in this retesting requirement.

The Claimant herein had been found guilty of a previous Rule G violation in 1985.

The Board here reaches the same conclusion as in Award No. 19, to the effect that the testing itself was not based on any probable cause directly related to the Claimant, but that the circumstances do not warrant payment of back pay or retroactive benefits, although the Claimant is to be reinstated with seniority rights unimpaired.

A W A R D

Claim sustained to the extent provided in the Findings. The Carrier is directed to put this Award into effect within thirty (30) days of the date of this Award.



HERBERT L. MARX, JR., Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



WENDELL A. BELL, Carrier Member

NEW YORK, NY

DATED: 1/14/91.