PUBLIC LAW BOARD NO 5850

Award No.
Case No. 105

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Eastern Region, Trackman Mark J. Dill from service was unjust.

2. That the Carrier now reinstate Claimant Dill with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of Investigation held 1:00 p.m. December 2, 1998 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.

3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant, because of an earlier incident involving Rule 1.5, was subject to random testing. On August 7, 1998, Claimant was required to submit to a drug and alcohol test. A urine sample was collected and Claimant was tested on the breathalyser. The readings on the breathalyser were .044 and .036 for two tests given 20 minutes apart.

There is no doubt that Claimant was in violation of Rule 1.5. The defense raised that this was Claimant's first time violation of Rule 1.5, but this Board finds the defense faulty.

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Claimant knew he was subject to random testing. He stated it was part of the deal, and that deal that Claimant referred to is in his record when he was conditionally reinstated to service on November 11, 1998, after he admitted a Rule 1.5 violation and signed a waiver agreeing to certain conditions.

The Carrier furnished substantial evidence of Claimant's culpability for the charges assessed, and in view of the second Rule 1.5 violation in less than two years, the dismissal of Claimant is appropriate.

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.

Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli, Labor Member

Thomas M. Rohling, Carrier Member

Dated: March 26, 1999