PUBLIC LAW BOARD NO 5850

Award No.
Case No. 128

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 Easter (sic) Region Machine Operator R. J. Weller from service was unjust.

2. That the Carrier now reinstate Claimant Weller with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 1:00 p.m. July 13, 1999 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, on July 22, 1998, tested positive for a prohibitive drug. On July 23, 1998, Carrier advised Claimant of the positive findings and because this was Claimant's first violation of Rule 1.5, he was advised that his suspension would be conditioned by:

"...2) your placing yourself into the Employee Assistance Program
3) your full compliance with the program and,
4) your full compliance with all instructions issued you by the Chief Medical Officer...."

Said letter to Claimant also advised him that failing to abide with these terms, the

suspension would be converted to a dismissal.

Claimant did not complete the program and with the assistance of his Organization, the Carrier gave him a second chance. The Carrier advised Claimant in a letter dated December 14, 1998, of the same conditions set forth on July 23, 1998, and Claimant signed said letter indicating his willingness to comply.

He did not. He was then cited for an investigation that was held on January 13, 1999, without Claimant in attendance. For reasons set forth in Case No. 106 of this Board, the case was remanded to the property, giving Claimant another opportunity to defend himself.

This investigation was held July 13, 1999, again, without Claimant in attendance. At that investigation, the Carrier presented substantial evidence of Claimant's culpability for the charges assessed. Following the investigation, Claimant was dismissed from service.

The discipline 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: November 9, 1999