

## PUBLIC LAW BOARD NO 5850

**Award No.**  
**Case No. 129**

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
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(The Burlington Northern Santa Fe Railroad

**STATEMENT OF CLAIM:**

1. The Carrier violated the Agreement when on May 18, 1999, the Carrier dismissed Mr. R.L. Byars, Jr. for the alleged violation of Rule 6.2 and 12.0 of the Burlington Northern Santa Fe's Policy on the Use of Alcohol and Drugs, effective October 15, 1996, in connection with his alleged testing positive for a controlled substance for the second time within a ten-year period.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority restored, he shall be paid for all wages lost and discipline shall be removed from his record.

## **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.

Pursuant to the existing "Policy on Use of Alcohol and Drugs," specifically Rule 9 and the Letter of Agreement of June 24, 1991, relative thereto, Claimant, on May 18, 1999, was advised that his seniority and employment with the Carrier was terminated as this was the second time within a ten year period that he tested positive for a prohibitive drug.

Claimant's first positive test was on October 27, 1998, and the second violation occurred May 10, 1999.

The policy of termination for a second positive test within a ten year period has been well publicized by Board postings and direct mail. Carrier's action in this instance was proper and in full compliance with existing Rules, Agreements and practices.

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

11/10/99  
11/10/99  
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