

PUBLIC LAW BOARD NO 5850

**Award No.
Case No. 133**

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on June 28, 1999, the Carrier dismissed Mr. A. Nalwood, for the alleged violation of Rule 12.0 of the Burlington Northern Santa Fe's Policy on the Use of Alcohol and Drugs, effective October 15, 1996, and Rule 1.6 of the Maintenance of Way Operating Rules effective January 31, 1999. The dismissal is 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 vacation, all rights unimpaired and pay for all wage loss commencing June 4, 1999, continuing forward and/or otherwise made whole.

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 tested positive for alcohol, the second such finding within a ten year period. The first time was in July, 1998, and the second time was June, 1999.

In 1998, he was advised of having to submit to random testing. In this

Incident, his defense was that he was not yet on duty when he was requested to submit to the test. He was, however, on company property, thus whether or not he was technically on or off duty is a moot point.

The dismissal of Claimant was pursuant to the Carrier's Drug and Alcohol Policy revised October, 1996.

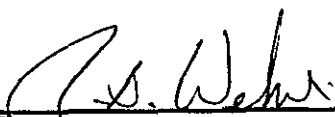
AWARD

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: December 27, 1999