

**PUBLIC LAW BOARD NO 5850**

**Award No.  
Case No. 152**

**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 November 9, 1999, Mr. P. L. Rainbolt was dismissed from service for alleged violation of Rule 7.9 of the Carrier's policy on the Use of Alcohol and Drugs, effective September 1, 1999, in connection with his allegedly testing positive for a controlled substance for the second time on November 1, 1999.

2. As a consequence of the Carrier's violation referred to above, Mr. Rainbolt shall be reinstated with seniority, vacation, all other rights unimpaired, the discipline shall be removed from the Claimant's personal record, and he shall be compensated for all wages lost in accordance with the Agreement.

**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.

On November 1, 1999, Claimant was tested for drugs and alcohol and did test positive for a controlled substance. He was suspended from service pending the results of an investigation.

The investigation was held December 9, 1999. Claimant was dismissed following the investigation.

There is no question regarding the validity of the test results for the November 1, 1999, test. In fact, Claimant admitted that during the weekend of October 30, 31, 1999, he did ingest a controlled substance, but he believed it was not of sufficient quantity to result in a positive test. He erred.

The dismissal stands. This was Claimant's second positive test occurring just two weeks after he had been reinstated following his first positive test for alcohol and prohibited drugs conducted December 22, 1998. At that time he was suspended from service and reinstated conditionally on October 15, 1999. Part of the conditional reinstatement was random testing and November 1, 1999, was the first such test.

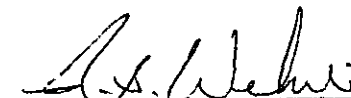
**AWARD**

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  
Dated: 2/1/01

  
Thomas M. Rohling, Carrier Member