

PUBLIC LAW BOARD NO 6860

**Award No.
Case No. 160**

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 October 6, 2000, Mr. Lorenzo Ben was dismissed from service for alleged violation of Section 7.9 of the Carrier's policy on the Use of Alcohol and Drugs, effective September 1, 1999, in connection with his allegedly failing to comply with the Instructions of the EAP Coordinator following his return to work after testing positive for alcohol on October 6, 2000.

2. As a consequence of the Carrier's violation referred to above, Mr. Ben 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.

This is, except for the name and dates, identical in factual material as that found in Case No. 156.

Claimant tested positive for a prohibitive drug/alcohol in June, 1999. Claimant was suspended from service and conditionally reinstated in August, 1999.

The reinstatement, as stated, was conditional and Claimant agreed to those

conditions which were as follows:

"Any one or more of the following conditions will subject you to dismissal for failure to obey instructions.

1. A repeat positive alcohol test and/or drug test for controlled substances obtained under any circumstances.

THOSE EMPLOYEES WHO HAVE TESTED POSITIVE IN THE PAST TEN (10) YEARS WOULD BE SUBJECT TO DISMISSAL WHENEVER THEY TEST POSITIVE A SECOND TIME

2. Failure to abide by the instructions of the Medical Department/Employee Assistance Program regarding treatment and/or follow-up testing.
3. Refusal to provide a urine specimen or breath alcohol for testing when instructed under the terms of this policy or Federal or State regulations. Tampering with a urine sample by substitution, dilution or adulteration will be deemed a refusal."

As the result of a random test on October 6, 2000, the Carrier terminated Claimant's seniority and employment rights pursuant to a bonafide contract that is in existence as Claimant tested positive for a prohibitive substance a second time within a ten year period.

A review of the on-property correspondence convinces this Board that Carrier's actions were entirely proper under the existing circumstances.

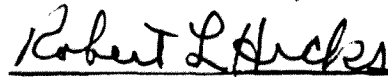
AWARD

Claim denied.

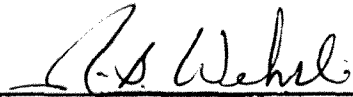
ORDER

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: Feb. 27, 2001