

PUBLIC LAW BOARD NO. 5850

**Award No. 179
Case No. 179**

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 January 25, 2001, Mr. Gary D. Goeson was dismissed from service for allegedly violating Maintenance of Way Operating Rule 1.5 in conjunction with a positive drug test.
2. As a consequence of the Carrier's violation referred to above Mr. Goeson shall be returned to service, the discipline shall be removed from Mr. Goeson's personal record and he shall be compensated for all wages lost, if any, 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 October 10, 2000, Claimant was advised he tested positive for a controlled substance. This was Claimant's first Rule 1.5 violation, and pursuant to Carrier's Drug and Alcohol Policy, first time violators can seek waiver of the investigation by contacting the Drug and Alcohol Testing Department within 45 days of the date of suspension. He then can agree to enter a rehab program and/or follow the guidance of the counselor.

Claimant did not contact anyone after receiving the suspension letter, and as a

result, the Carrier set an investigation that was finally held on January 5, 2001. Claimant opted, at his peril, to not attend. Thus, in his absence, Carrier's evidence stood unrefuted.

The Board upholds Carrier's decision to dismiss Claimant from its services.

AWARD

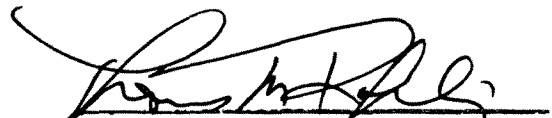
Claim denied.

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: October 22, 2001