

PUBLIC LAW BOARD NO. 5850

Award No. 180
Case No. 180

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on January 22, 2001, Mr. M. L. Bills was dismissed from service for allegedly violating Maintenance of Way Operating Rule 1.5 In conjunction with a positive drug test it is alleged that this was Mr. Bills second positive test within a ten year period.
2. As a consequence of the Carrier's violation referred to above Mr. Bills shall be returned to service, the discipline shall be removed from Mr. Bills' 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 January 22, 2001, Claimant was advised that his seniority and employee rights were terminated for testing positive for a controlled substance for a second time within a ten year period.

Claimant tested positive on May 16, 2000, the first time, and at that time waived his rights to an investigation and entered the so-called EAP Program. He obviously satisfied his counselors at that time of his sobriety and had returned to work only to feel

subsequent drug and alcohol test.

Pursuant to the existing practice and Agreements, Claimant's seniority rights and employment rights were terminated by notification of the results of the second test leaving Claimant the option only of filing claim.

The dismissal of Claimant was proper pursuant to the existing labor Agreement.

AWARD

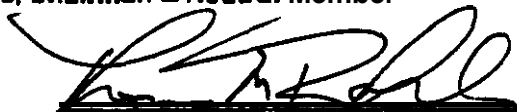
Claim denied.

ORDER

This Board, ● For 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