

PUBLIC LAW BOARD NO. 5850

Award No. 192
Case No. 192

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on July 13, 2001, when it dismissed Mr. W. M. Kiker from service for allegedly refusing to submit to a urinalysis and breath test on July 11, 2001, which allegedly resulted in a second violation of the Carrier's Policy on the Use of Drugs and Alcohol, (section 7.9) within 10 years, also violating Maintenance of Way Operating Rule 1.5.
2. As a consequence of the Carrier's violation referred to above Mr. Kiker shall be returned to service, the discipline shall be removed from his 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.

Claimant, on July 9, 2001, was seeking protective coverage for rail contractors from the Dispatcher. The Roadmaster was in the neighborhood and heard Claimant's request for protection or an explanation of the protection he did have. To the Roadmaster, Claimant sounded incoherent and confused.

The Roadmaster drove to Claimant's worksite and direct dialogue convinced the Roadmaster that something was amiss. He determined that a substance abuse was a strong possibility. The Roadmaster intended to drive Claimant to the testing facility, but about 2 minutes from the facility, Claimant told the Roadmaster to drive him to his truck, he was not going to take the drug test.

The Roadmaster did advise him of the consequences of his refusal, whereupon Claimant allegedly told the Roadmaster he was well aware of the policy.

A refusal to take the test is treated as a positive test. This was Claimant's second positive test within ten years. Pursuant to an existing Agreement, Claimant was dismissed following the second positive test within ten years. Carrier acted in compliance with the existing Agreement.

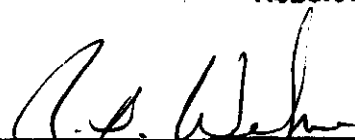
AWARD

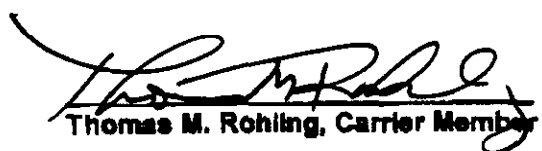
Claim denied.

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: May 29, 2002