

PUBLIC LAW BOARD NO. 5860

**Award No. 203
Case No. 203**

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 November 27, 2001, when it dismissed Mr. S. M. Wallace, for allegedly violating the Carrier's Policy on the use of Drugs and Alcohol for a second time within 10-years, when he tested positive for a controlled substance on November 16, 2001.
2. As a consequence of the violation referred to above, the Carrier shall return Mr. Wallace, to service with seniority and benefits unimpaired, remove any mention of the incident from his personal record, and make him whole for any wages lost, per 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 27, 2001, the Carrier terminated Claimant's services for his second violation of the Carrier's Policy on Drugs and Alcohol.

The pertinent parts of the November 27, 2001 letter read as follows:

"Dear Mr. Wallace:

I have been advised by Medical & Environmental Health Department in

letter dated November 21, 2001, that you violated Section 7.9 of the Burlington Northern Santa Fe policy on Use of Alcohol and Drugs dated September 1, 1999. Section 7.9 was violated with this being your second violation of the BNSF policy on Alcohol and Drugs, first violation was a probable cause test that revealed the presence of a controlled substance, conducted on October 30, 2000.

The pertinent part of Section 7.9 reads as follows:

'More than one confirmed positive test either for any controlled substance of alcohol, obtained under any circumstances during any 10-year period.'

Carrier records indicate that on November 7, 2000 you commenced a conditional suspension and reinstated on a conditional basis after a violation of the BNSF Policy on Use of Alcohol and Drugs. In a letter dated January 11, 2001 you agreed to totally abide by the Company rules regarding the use of intoxicants, with the understanding a failure to comply with this and other conditions would result in immediate removal from service without an investigation.

For the reason given above, effective immediately, your seniority and employment with BNSF RR Company are terminated. If you dispute the action taken, you are entitled to have a claim submitted on your behalf for reinstatement, which must be presented within 60 days from the date of this letter pursuant to letter of understanding dated June 24, 1991, between Carrier and the Brotherhood of Maintenance of Way Employees."

The above letter encapsulated Carrier's position in its entirety. There is no dispute regarding Claimant's positive test for marijuana, which was his second positive test within a ten year period.

The existing Agreement provides for termination of services without an investigation which was done with the aforementioned letter.

Claimant contends he ate several slices of a brownie that, unbeknownst to him, was laced with marijuana. In fact, with the claim presented seeking his reinstatement, two notes were attached from different people indicating that Claimant had no idea that the brownie was laced with marijuana.

The Carrier was not swayed by this argument, and neither is this Board.

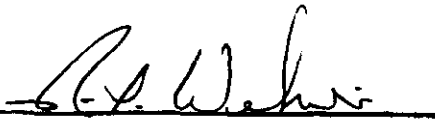
AWARD

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: September 30, 2002