

PUBLIC LAW BOARD NO. 5850

Award No. 208
Case No. 208

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 30, 2001, when it dismissed Mr. G. T. Lucero, 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 Alcohol on July 23, 2001.
2. As a consequence of the violation referred to above, the Carrier shall return Mr. Lucero, 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 December 5, 2000, Claimant failed a drug and alcohol test. He agreed to enter rehabilitation and on February 2, 2001, he agreed to certain conditions and was advised he may very well face dismissal if he was to be found guilty of any one or more of certain specified conditions, one of which reads:

"...Possession of alcohol, controlled substance, illegally obtained drugs, adulterant substance or drug paraphernalia on BNSF property obtained

under any circumstances...within 10 years of a confirmed positive test either for any controlled substance or alcohol...."

Also, his return contained the caveat that he would be tested randomly for drugs and/or alcohol for the next five years.

On July 23, 2001, as a result of a random test, he tested positive for alcohol. His services were then terminated effective July 30, 2001 pursuant to an existent Agreement.

Carrier's actions in terminating Claimant were proper.


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