

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 242**

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 December 13, 2002; when it dismissed the Claimant, Mr. L. A. Creech, without an investigation, for allegedly violating the Carrier's Policy on the Use of Alcohol and Drugs, by testing positive for a controlled substance, a second time within a ten year period, after a December 11, 2002 test came up positive for the metabolite for Cocaine; a violation of Maintenance of Way Operating Rule 1.5.
2. As a consequence of the violation referred to in part (1), the Carrier shall restore the Claimant to service, remove any mention of this incident from his personal record, and make him whole for all wages and benefits lost account of this incident.

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 August 13, 2001, Claimant tested positive for cocaine metabolite. He agreed to enter rehabilitation and successfully completed the requirements of the Carrier's Assistance Program Counselor. He was approved to return to work on November 27, 2001.

One of the requirements of resuming duty on November 27, 2001, Claimant was required to sign a letter indicating his understanding that a second positive test would result in his dismissal and that he would be subject to random testing for the next five years.

On December 11, 2002, as a result of a random test, he again tested positive for cocaine metabolite. In the letter Claimant signed to resume service in November of 2001, was the warning that reads in pertinent part:

"...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...."

he may very well face dismissal. As a result of the random positive test on December 11, 2002, the Carrier dismissed Claimant pursuant to an existing Agreement.

Carrier's actions in dismissing 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



William L. Yeck, Carrier Member

Dated:

2/17/04