

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 247**

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 2, 2003, when it dismissed Claimant, Mr. H. H. Green, For violating the Carrier's Policy on the Use of Alcohol and Drugs a second time within 10-years, 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 immediately reinstate the Claimant to service with benefits and seniority unimpaired and make him whole for all wages lost account of this violation. Additionally, the Carrier shall remove any mention of this incident from the Claimant's personal record.**

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 was working under the Frisco Agreement that specifies that second time Rule 1.5 violators within a 10 year period are first written a letter of termination with the caveat that if Claimant felt unjustly handled, he could, with a timely notice, request an investigation.

Claimant did and the investigation was held on August 6, 2003, after which Claimant's termination was confirmed.

Claimant tested positive for an illegal substance on June 24, 2003, as a result of a random test that Claimant was subject to, and had agreed to, when he was reinstated after having agreed to his conditional terms of employment after testing dirty on October 12, 1994.

After Claimant was offered reinstatement following the 1994 incident, he was also advised that a second failed test would result in his permanent dismissal.

Claimant failed to establish that anything was amiss in the second testing that would provide a technical error sufficient enough to render the findings of being contaminated with cocaine was flawed.

Carrier's actions were proper and strictly in accordance with their own guidelines.

Claimant's discipline will not be in any way modified. His dismissal stands.

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: 2/27/04