

PUBLIC LAW BOARD No. 5950

Award No. 282
Case No. 282

PARTIES TO DISPUTE:
(Brotherhood of **Maintenance** of Way **Employees**
(The Burlington Northern Sante Fe **Railroad** (Former
(**ATSF Railway Company**)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on June 7, 2005 when Claimant, C. D. Morris, was **dismissed** for violating **Section 7.4 of the BNSF Policy on the Use of Alcohol and Drugs, for refusal to test.**
2. As a consequence of the violation referred to in part (1), the Carrier shall **immediately reinstate the Claimant's seniority, vacation and all other rights restored, remove any mention of this incident from his personal record, and make him whole for any wages lost beginning June 7, 2005 forward.**

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 off work in **excess of six months.** The Carrier's policy requires a drug and alcohol test **before returning to work.** Claimant was **scheduled** for such a test on **March 29, 2005.** He appeared **promptly** and on his first **attempt** to provide sufficient urine that could be **tested was unsuccessful.**

Pursuant to **Rules** governing drug and **alcohol testing, if the individual does not** furnish a sample **quantity to be tested, he/she has three hours in which to do so.**

Claimant's **three-hour** window commenced at **0731.** From 0731 until 1050, he

drank **approximately** 40 ounces of **liquid**. He **also walked** around **the building twice**, yet he could not, or did not, **furnish a sufficient quantity** of **urine** at one **time** that could be **tested**.

Claimant was referred to a doctor to determine **if Claimant** had any **physical**

- **Inherent or a shy bladder** that hindered **his ability** to **furnish a sufficient** amount of **urine** that could be **tested**. After the **doctor's examination**, the **Carrier was advised** Claimant did not have a **medical impairment** that would **prevent him from furnishing** the required amount of **urine**.

The Carrier then wrote **Claimant** on April 14, 2005, advising an **investigation** was **established to determine his "responsibility, if any, for refusing to participate in required testing after being properly notified...."**

Following the **investigation**, the **Carrier** on June 7, 2005, wrote **Claimant** as follows, advising him that:

"...as a result of formal investigation that was held on May 10, 2005, concerning your refusal to participate in required testing after being properly notified; you are dismissed from employment for violation of Section 7.4 of Burlington Northern Santa Fe Policy on the Use of Alcohol and Drugs, dated September 1, 2003."

During the investigation, Claimant's Representative argued that the Claimant did not refuse to participate as charged by the Carrier in its charge letter. He just simply could not produce a sufficient quantity of urine that could be tested.

The employee who cannot or **will not furnish sufficient urine during a three-hour period** is considered **refusing to participate** in the drug **testing; unless, of course, there exists** a **medical reason** why it could not be accomplished.

The on-property handling of the claim on **Claimant's behalf** argued **Claimant did**

not ~~refuse~~ to ~~participate~~ and challenged the ~~medical findings~~ of no ~~physical impairment~~, arguing the doctor who performed the ~~physical~~ and found ~~nothing~~, did ~~an inadequate~~ ~~physical~~.

This Board ~~will~~ not challenge the ~~medical~~ doctor's ~~findings~~.

To ~~this~~ Board, the ~~termination~~ of ~~Claimant's~~ employment and ~~seniority~~ me fully ~~justified~~ pursuant to terms and ~~conditions~~ of ~~its~~ Drug and ~~Alcohol~~ Policy.

The discipline will not be ~~challenged~~.

AWARD

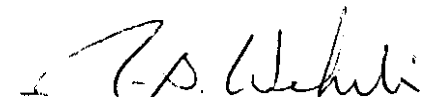
Claim denied.

ORDER

thb Board, after ~~consideration~~ of the dispute ~~identified above~~, hereby orders that ~~an award favorable~~ to the ~~Claimant(s)~~ not be made.



Robert L. Hkke, Chekman & Neutral Member



Rick B. Wehrli, Labor Member



Samantha Rogers, Carrier Member

Dated: *April 26, 2006*