

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

STATEMENT OF C WY:

1. The **Carrier violated** the **Agreement** on July 14, 2005 when It **dismissed Claimant, 8. George**, for allegedly **testing positive** for **drugs/alcohol** a **second time within 10 years**.
2. **As** a consequence of **the violation** referred to in **part (I)**, the **Carrier** shall **immediately** return **the Claimant** to **service with seniority**, vacation and **all** other rights restored, remove any **mention** of this incident **from** **hk personal** record, and make **him** whole for **all time lost** beginning July 14, 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**.

On July 14, 2005, the **Carrier** wrote Claimant as follows:

"I have been **advised** by the **BNSF Medical** Department that you have **violated** the **BNSF Policy** on the **Use of Alcohol and Drugs**, effective September 1, 2003, by **testing positive** for alcohol on a **follow-up** test conducted on July 13, 2005. Furthermore, **BNSF** records **disclose** that **this** is the second time within a ten-year period that you have **tested positive** under the **BNSF Policy** on the **Use of Alcohol and Drugs**. The **first violation** occurred on **April 15, 2004**.

In accordance with the **Carrier's** stated **policies** and **practices**, **BNSF** shall **dismiss** from **service** employee6 who have **more** than one **confirmed positive test** for **alcohol** or a **controlled substance**, obtained under any

circumstances, during any ten-year period. Therefore, effective immediately, your seniority and employment with the BNSF Railway is terminated.

Pursuant to Letters of Understanding dated June 24, 1991, and December 29, 2003, between the Carrier and the Brotherhood of Maintenance of Way Employees; if you dispute this action, a claim for your reinstatement may be filed on your behalf within 60 days from the date of this letter."

Claimant did timely file a claim, but nothing was brought forward or established that the test was in any way flawed.

The two Agreements referred to in Carrier's letter to Claimant permits them to terminate seniority and employment rights of anyone who fails a second drug test within 10 years of the first failure.

After Claimant's first failed drug test on April 15, 2004, he regained his seniority and employment rights by agreeing to certain terms contained in a letter he signed indicating he read the letter and understood the terms of his return to service. That letter reads as follows:

"Dear Mr. George:

This letter will confirm that as a result of conference on April 18, 2004, concerning your testing positive for alcohol during a reasonable suspicion test conducted April 15, 2004, Phoenix, Arizona, you are issued a Level 5 conditional suspension effective April 19, 2004, for your violation of Rule 1.5 of the Maintenance of Way Operating Rules, effective January 31, 1999, as supplemented or amended and BNSF Policy On use of Alcohol and Drugs dated September 1, 2003.

This suspension is conditional based upon: 1) your first-time violation of Rule 1.5 of BNSF Policy On Use of Alcohol and Drugs, 2) your placing yourself into the Employee Assistance Program, 3) your full compliance with the program and with all instructions issued you by the Employee Assistance manager.

You must contact the Employee Assistance Manager within 5 days for evaluation and/or treatment. Your treatment must commence within 46

days from the **start of** your euepeneion. All ● pplkebk rules for **return** to work must be **compiled** with es **outlined** in the **BNSF Policy On Uee of Alcohol end Drugs**.

Your euepenelon **will be considered served** when you ● re **released** to **active service** by the Medkel and **Environmental Health Department** upon the **recommendation** of the Employee **Assistance Manager**, provided it b **within 60 deye** from the dete **this euepenelon commences**. **Failure** to **receive a favorable recommendation** by the end of the **60 dey period**, or **failure to abide** by the **instructions** or **program eet forth** by the Employee Aeebtence **Manager and/or the Medkel end Environmental Health Department**, will **automatically result** In **dismissal** If such charges ● re **proven** In e **separate formal investigation**."

Carrier termination of Claimant's employment end seniority rights wee en **action** **sanctioned** by the two letter **Agreements** referred to In **Carrier's termination letter** to **Claimant**.

This discipline will not be modified.

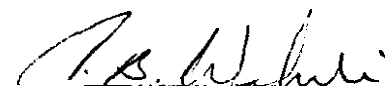
AWARD

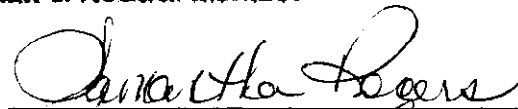
Claim denied.

ORDER

Thb **Board, after consideration of the dispute identified** above, hereby **orders** that en **award favorable** to the **Claimant(s)** not be **made**.


Robert L. Hkke, Chairman & Neutral Member


Rick B. Wehrli, Labor Member


Samantha Rogers, Carrier Member

Dated: *April 26, 2006*