

PUBLIC LAW BOARD NO. 5850

**Award No. 296
Case No. 296**

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

**(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)**

STATEMENT OF CLAIM:

- 1. The Carrier violated the Agreement on April 10, 2006 when Claimant, J. Lasiloo, was dismissed for testing positive for alcohol a second time within 10 years, during a follow up test; and**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall immediately return the Claimant to service with seniority, vacation and all other rights unimpaired, remove any mention of this incident from Claimant's personal record, and make Claimant whole for all time lost commencing April 10, 2006.**

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 April 10, 2006, 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 April 3, 2006. 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 September 28, 2005.

In accordance with the Carrier's stated policies and practices, BNSF shall dismiss from service employees 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."

A claim was timely filed in Claimant's behalf but nothing was established via the claim route that would nullify Carrier's action.

This is not the first time someone violated the 10-year drug and alcohol understanding as there exists numerous Awards on the property involving a number of arbitrators, Brotherhood of Maintenance of Way and this Carrier each upholding Carrier's right to terminate an employee's employment.

Carrier's action was in accordance with an existing Agreement.

AWARD

Claim denied.

ORDER

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


Robert L. Hicks, Chairman & Neutral Member


David D. Tanner, Labor Member


Samantha Rogers, Carrier Member

Dated: 6/21/2007