

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 311**

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 when Claimant, R. Tsosie, was dismissed on May 19, 2006 for testing positive for alcohol a second time within 10 years; 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 May 11, 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 July 7, 2005, Claimant tested positive for alcohol. To retain his seniority and because the July 7, 2005 positive test was a first time occurrence, Claimant signed a letter of understanding that clearly spelled out the consequences should he fail a second alcohol test within ten years.

Claimant, on May 11, 2006, again tested positive for alcohol, and this being his second failure within ten years, he was advised he was dismissed from the service of the

Carrier.

This dismissal was pursuant to the existing Agreements which have been challenged numerous times in cases resolved both before neutrals in Public Law Boards 4244 and 5850.

Carrier's termination of Claimant's seniority and right to work were in accordance with existing Agreements. The dismissal is confirmed by this Board.

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


David D. Tanner, For the Employees


Samantha Rogers, For the Carrier

Dated: June 30, 2008