

**PUBLIC LAW BOARD NO. 5850**

**Award No.  
Case No. 323**

**(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 September 12, 2007 when Claimant, L.R. Mansfield 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 September 12, 2007.**

**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 September 6, 2007, Claimant underwent a follow-up test under the Drug and Alcohol Policy that revealed the presence of a controlled substance.**

**Claimant's first violation of the Drug and Alcohol Policy occurred on July 2, 2004. He received a conditional suspension based upon his agreement to abide fully with all the instructions issued by the Employee Assistance Manager.**

**He successfully completed that program and was reinstated to service on August**

6, 2004. In order to regain his seniority and his job, he signed an agreement that he would be dismissed for violating the terms of that agreement if he had more than one positive test for any controlled substance or alcohol under any circumstances during any 10 year period.

To reiterate, his first failed drug and alcohol test occurred July 2, 2004. The second failed test was September 6, 2007. He thus violated the terms of the agreement he signed to regain his seniority and pursuant to the existing Rules which have been challenged without success numerous times, he was dismissed from service.

Carrier acted properly as provided for in the existing Agreements.

**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

Dated:

*August 27, 2008*

  
Samantha Rogers, For the Carrier