

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 326**

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 on July 9, 2007 when Claimant, A.R. Gauna (6526784) 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 July 19, 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.

In a random drug test Claimant, on July 19, 2006, was found to have tested positive.

On September 28, 1999, Claimant tested positive for a controlled substance but was conditionally suspended and regained his seniority by adhering to the instructions of the Employees Assistance Program. Before he was reinstated, however, he signed an agreement setting forth a number of conditions he had to abide by, and failure to abide

by any one condition would cause his termination of service.

One of the conditions of termination was that if he had any confirmed positive test for any controlled substance during any ten year period he would be dismissed.

To reiterate, his first failed test was September 28, 1999. The second failed test was July 19, 2006.

Claimant thus violated the terms of his return to service, and the Carrier reacted by dismissing him from all service. Carrier abided by the existing Agreement.


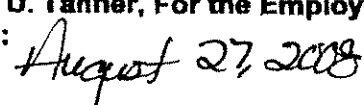
AWARD

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: 


Samantha Rogers, For the Carrier