

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 343**

(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 when Claimant H. D. Rice, Jr., was terminated for testing positive for a controlled substance a second time within ten years on March 6, 2008; 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 March 6, 2008.**

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.

Item 1 of the Statement of Claim sets forth the occurrence that prompted a termination letter. Claimant's termination under the terms of an existing Agreement without a hearing was proper.

After the first positive test result for a controlled substance, to regain his seniority Claimant went through an EAP program and agreed to a stringent set of conditions, plus being advised a second positive within a 10-year span would result in

his termination. Claimant's first positive test was February 27, 2008.

The Carrier's action in this matter was proper and within the scope of existing Agreements.

AWARD

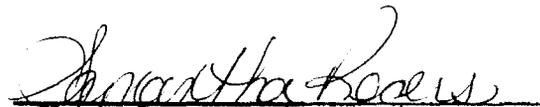
Claim denied.

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


Samantha Rogers, For the Carrier

Dated: 4/16/09