

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 51

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Claimant was denied the right to an Investigation, which is in violation of Rule 13 and Appendix No. 11 of the Agreement, when he was dismissed with the opportunity to prove his innocence.
2. That the Carrier now rescind their decision, return the Claimant to service with seniority and all other rights unimpaired, expunge all discipline from the Claimant's record and pay him for all wage loss as a result of his dismissal from service.

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.

Pursuant to the existing "Policy on Use of Alcohol and Drugs," specifically Rule 9 and the Letter of Agreement of June 24, 1991, relative thereto, Claimant, on May 2, 1997, was advised that his seniority and employment with the Carrier were terminated as this was the second time within a ten year period that he tested positive for a prohibitive drug.

Despite the valiant efforts by Claimant's representatives to thwart Carrier's efforts to impose the ultimate in discipline, by arguing that Claimant was tested in error, that he was not really slated for testing on the day he was, this Board finds the Carrier's actions were in accordance with the existing agreements.

The mix-up of assignments to be tested were adequately explained by the Carrier as a typographical error and supported by probative evidence. Further, the Carrier furnished proof positive of the test documenting Claimant's ingestion of a prohibitive drug.

The policy of termination for the second positive test for prohibitive drugs within a ten year

period has been well publicized by Board postings and direct mail. To reiterate, Carrier's actions were proper and in full compliance with existing Rules, Agreements and Practices.


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


C. F. Foose, Labor Member


Thomas M. Rohling, Carrier Member

Dated: October 23, 1997