

PUBLIC LAW BOARD NO 5850

Award No.  
Case No. 62

PARTIES TO DISPUTE:  
(Brotherhood of Maintenance of Way Employees  
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated Rule 13, and Appendix No. 11, when Sampson Antonio was dismissed from service based on his allegedly failing a breath alcohol test on Friday, August 29, 1997, and his alleged failure to comply with the conditions set forth by the Employee Assistance Counselor in a letter of May 13, 1997.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to service with all seniorities, vacation and benefit rights restored and compensated for all wage loss beginning September 4, 1997, and continuing.

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.

The Carrier's Drug and Alcohol Policy clearly stipulates that:

"Those employees who have tested positive in the past ten (10) years would be subject to dismissal whenever they test positive a second time."

The parties have further agreed that:

"...an employee who is subject to dismissal under the aforementioned provision...shall be notified in writing by Certified Mail, Return Receipt requested, to the employee's last known address, copy to the General Chairman, of termination of his seniority and employment...."

Claimant in March, 1997, tested positive for alcohol, waived his rights to an investigation, accepted a suspension while undergoing rehabilitation and was returned to service in May, 1997, subject to an out patient's continued rehabilitation program and periodic random testing.

In August, 1997, following a random test, he failed a breath alcohol test. Pursuant to the Carrier's Drug and Alcohol Policy and its understanding as to implementation, Claimant was advised

that his seniority and employment was terminated.

The Carrier has substantiated its Findings of Claimant's violation of the terms and conditions he agreed to following his first violation in March. Claimant was fully cognizant of the consequences if he failed the test a second time in ten years. Carrier's action in terminating Claimant's employment and seniority was accomplished pursuant to an existing Agreement and it will not be disturbed.

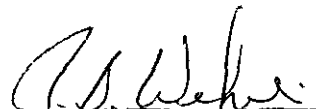
AWARD

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

  
Rick B. Wehrli, Labor Member

  
Thomas M. Rohling, Carrier Member

Dated: April 6, 1998