PUBLIC LAW BOARD NO 5850

Award No.
Case No. 86

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on May 8, 1998, the Carrier dismissed Mr. F.F. Espinoza for allegedly violation of Section 12 of the Carrier's Policy on Use of Drugs and Alcohol, effective October 15, 1996, in connection with his alleged testing positive for alcohol on May 1, 1998, for the second time within a ten year period.

2. As a consequence of the Carrier's violation referred to above, Claimant's seniority shall be restored, he shall be paid for all wages lost and discipline shall be removed from his record.

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 employes 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 employe who is subject to dismissal under the aforequoted 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...."

The understanding further provides that if the Claimant disagrees with the Carrier's decision, a claim can be filed within 60 days of the date of the dismissal letter.

Obviously a claim was filed, but the results of Claimant's test on May 1, 1998, registering alcohol in his system could not be overturned, and since Claimant's first positive

test for a prohibitive substance occurred October 25, 1991, Carrier's implementation of dismissal for a second positive test was in accordance with the letter of understanding. The discipline 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: 10/7/98