PUBLIC LAW BOARD NO. 6284

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

-and-

Burlington Northern-Santa Fe Railway

AWARD NO. 7
CASE NO. 7

STATEMENT OF CLAIM:

Claim on behalf *of* Engineer G.W. Toldness requesting reinstatement to service with seniority unimpaired. *payment* for any and all time lost, and t&t any *notation* regarding *this incident* be removed from his personal record.

FINDINGS:

This Public Law Board NO. 6284 finds that the parties herein are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By letter dated May 21, 1999 *the* Carrier notified the Claimant, Engineer Gary W. Toldness, that he was dismissed from service for violation of *Rule* 15 and 1.6 as follows:

> This letter will confirm that as a result of formal investigation held on May 14. 1999, concerning your adulteration of random urine samples, random test #2351281, on April 28, 1999 as evidenced by test results received this *office* on May *6. 1999, you* are dismissed from employment for violation of Rules 1.5 and 1.6 of the General Code of Operating Rules and for violation of the Burlington Northern Santa Fe Railway's policy on the Use of Drugs and Alcohol, Section 12.
>
> Please arrange to return all Company property and any Amtrak transportation passes in your possession. A check will be issued for any moneys due you.
>
> This letter will be placed in your personal file. Your signing below serves as receipt of this dismissal.
>
> Respectfully,

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s/Donald G. Boespflug
Director Administration

No basis exists to set aside the discipline imposed on the procedural grounds asserted by the Organization.

Mr. Toldness admitted that he had tampered with the urine specimen at the time of the random test. Clearly then he is responsible for the Rules violations as charged.

The Organization contends that dismissal is excessive in this case given the Claimant's service record. The Carrier insists that dismissal should be upheld in this case under the clear statement set forth in the Carrier's Drug and Alcohol Policy. Moreover, it is a Rule 1.6 dishonesty violation since it is an intentional act of deception. The Carrier sets forth in significant detail the rational. of its position and it cites supporting awards.

We find that the discipline of dismissal is excessive in this particular case. Mr. Toldness admitted his responsibility at the investigation. He has no history of Rule G or Rule 1.5 violations on his personal record, and overall his employment record of over twenty-five years is satisfactory. He has successfully completed the treatment plan devised by his EAP counselor. R. has paid a very heavy price for his misconduct, being out of service since early May Of 1999. It is the belief of this Board that the discipline has now served its purpose. His return to the workforce after such a long disciplinary suspension will remind other employees that tampering or adulterating . sample will be detected by the highly sophisticated technology available to testing laboratories and that the discipline will be severe, up to and including discharge, assessed on a case by case basis, including consideration Of an individual's service record.

AWARD

As per Findings.

ORDER: The Carrier is required to comply with this award within thirty days.

Chairman and Neutral Member

Employee Member

Carrier Member
Dissent to follow

Dated: Feb. 26, 2001