

Award No. 192
Case No. 197

PUBLIC LAW BOARD NO. 4244

BURLINGTON NORTHERN SANTA FE RAILROAD COMPANY
AND
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Carrier's decision to remove former Central Region Maintenance of Way employee J.G. Bustamonte from service effective September 12, 1995 was unjust.

Accordingly, Carrier should now be required to reinstate the Claimant Bustamonte with seniority rights intact and compensate him for wages lost beginning September 12, 1995.

FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

In this dispute Central Region Track Supervisor J. G. Bustamonte was notified to attend a formal investigation on July 25, 1995, concerning his alleged violation of Rules 1.1, 1.1.2, 1.3.1, 1.5, 1.6, 1.9, 1.19, 54.1, 54.1.1, and 54.2 of the Carrier's Safety and General Rules for All Employees, and Rule 12.0 of the Carrier's policy Use of Alcohol and Drugs, as a result of his involvement in an accident while driving a Carrier vehicle. The investigation was postponed and held on August 18, 1995. Pursuant to the investigation the Carrier determined that he violated the cited rules, and he was issued a Level 6 dismissal from service.

The record shows that on June 26, 1995, the Claimant reported for duty at 7:00 a.m. At approximately 9:30 a.m. while driving a Carrier truck to his assignment, he fell asleep at the wheel and overturned the vehicle. Carrier officials were called to the scene of the accident and had the opportunity to discuss the accident with the Claimant. Based on his statements, the officials decided there was probable cause to warrant testing the Claimant for drugs and/or alcohol. The Claimant agreed to be tested, and he was withheld from service pending the results of the drug test.

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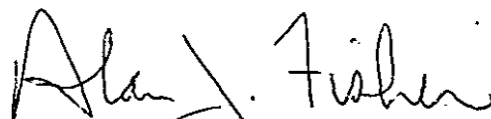
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In a letter dated July 5, 1995, from the Carrier, the Claimant was notified that he had tested positive for cocaine. Moreover, the Claimant admitted at the formal investigation that he had used cocaine two days prior to the accident.

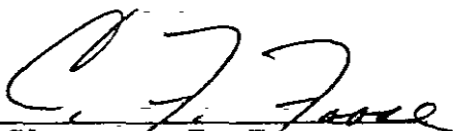
The record further shows that on April 13, 1993, the Claimant signed a waiver of his rights to a formal investigation and accepted a conditional suspension concerning a Rule G violation. On December 4, 1993, he returned to service subject to the terms and conditions set forth in Rule 12.0 of the Carrier's Policy on Use of Alcohol and Drugs. Specifically, if the Claimant tested positive for a second time within ten years he would be subject to dismissal.

Based on the evidence and testimony of record, the Board finds that the discipline assessed the Claimant was not excessive.

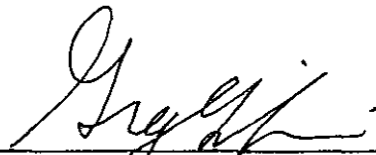
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



Clarence F. Foose
Organization Member



Greg Griffin
Carrier Member

Dated: _____

8/19/96