

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes
and
Burlington Northern and Santa Fe Railway
(Former ATSF Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when on October 9, 2002, Mr. M. E. Burk was dismissed from service for violation of Rule 1.5 of the Maintenance of Way Operating Rules and Section 7.9 of the BNSF Policy on the Use of Alcohol and Drugs in conjunction with Mr. Burk's alleged testing positive for alcohol on October 7, 2002.
2. As a consequence of the Carrier's violation referred to above Mr. Burk shall have his record expunged of the above referenced discipline, paid for all time lost as a result of his being dismissed, and he shall be returned to service with his seniority unimpaired. [Carrier File No. 14-02-0259. Organization File No. 140-1312-0210.CLM].

FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees ("Parties") herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the dispute herein.

The Claimant, Mr. Michael E. Burk, entered the Carrier's employment in 1977. He was required to submit to a random breath alcohol test on October 7, 2002, pursuant to rules of the Federal Motor Carrier Safety Administration. The test disclosed a breath alcohol concentration of 0.153. Federal regulations prohibit an employee from performing service while having .04 or more alcohol concentration in the breath.

On October 9, 2002, the Carrier's Division Engineer wrote the Claimant, as follows:

I have been advised by BNSF's Medical Director's office that you tested positive for the presence of alcohol on October 7, 2002, while on duty in violation of Rule 7.9 of Burlington Northern Santa Fe's "Policy on the Use of Alcohol and Drugs," effective September 1, 1999, resulting in your second positive within a ten-year period. Your first positive test was on June 27, 1995. . . . For the reason given

above, effective immediately, your seniority and employment with the BNSF Railway Company are terminated. If you dispute the action taken, you are entitled to have a claim submitted on your behalf for reinstatement, which must be presented within 60 days from the date of this letter, pursuant to Letter of Understanding dated June 24, 1991, between the Carrier and the Brotherhood of Maintenance of Way Employees [sic].

Section 7.9 of the Policy on the Use of Alcohol and Drugs reads as follows, in pertinent part:

Dismissal. Any one or more of the following conditions will subject employees to dismissal:

- More than one confirmed positive test either for any controlled substance or alcohol, obtained under any circumstances during any 10-year period.

The Claimant submitted a hand printed letter of resignation, which bears a "Received" stamp impression dated November 19. It reads as follows:

ATTN: B.N.&S.F. Corprate [sic] Support #6528350
Please accept this as my letter of resignation. I was fired on 10-7-02.
Michael E. Burk
[Social Security Number]
[signed in handwriting] Michael E. Burk

There are several notations in differing handwriting near the bottom of the page. One of them reads, "resigned on 10-9-02 as was dismissed 10-9-02."

The Organization promptly appealed the Claimant's dismissal, presenting several arguments why the Claimant should not have been dismissed. The Carrier responded to each of these.

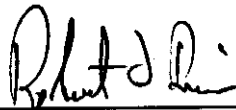
There is established arbitral precedent for the principal that an arbitrator need not respond to every argument presented by the parties, and in order to avoid an unduly lengthy opinion, the arbitrator may focus his attention only on those matters which he deems necessary to a correct, proper, and fair decision of the dispute.

While it appears from the handwritten notations thereon that the Claimant's resignation was not in the Carrier's possession until November 15, 2002, the Claimant was credited with resignation and dismissal on October 9, 2002, and his personal record so states.

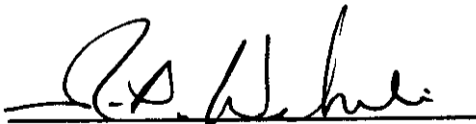
The Claimant's resignation (whether before or after his dismissal) makes it unnecessary for the Board to address the Parties' respective arguments. If he resigned before he was dismissed, he had no employment relationship when he was dismissed. If he resigned after he was dismissed, his resignation would preclude his reinstatement even if the Board were to render a decision in his favor. The claim will be dismissed.

AWARD

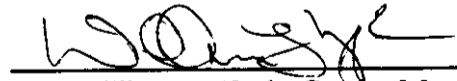
The claim is dismissed.



Robert J. Irvin, Neutral Member



R. B. Wehrli, Employee Member



William L. Yeck, Carrier Member

October 6, 2003

Date