

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 59

Case No. 59

STATEMENT OF CLAIM

Claim in behalf of Johnny L. Mosley. Social Security Number 458-06-1406, Payroll Number 796753-2, with a service date commencing August 6, 1979, that his dismissal from service on November 7, 1994 for his alleged violation of Rule 1.5 of the Burlington Northern General Rules is arbitrary, capricious, and on the basis of unproven and disproved charges and in violation of Rule 26 of the Fort Worth and Denver Agreement.

F I N D I N G S

The Claimant was directed to appear for an investigation of his alleged violation of Rule 1.5 of the Burlington Northern General Rules. There is convincing evidence that the Claimant received the hearing notice. Further, he spoke by telephone with the Trainmaster on the day before the hearing was scheduled and was advised concerning the date and time. Nevertheless, the Claimant failed to appear. The Conducting Officer waited a short time for

the Claimant to arrive, and then understandably proceeded to conduct the hearing.

Rule 1.5 reads in pertinent part as follows:

Employees must not have any prohibited substances in their bodily fluids when reporting for duty, while on duty, or while on company property.

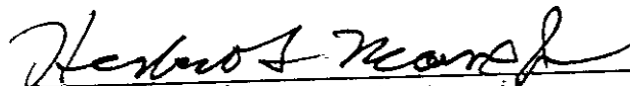
The Roadmaster recounted at the hearing that the Claimant had failed to report for work on October 3, 1994. The Claimant called in and requested four days' vacation. He failed to report at the end of this period, stating he had seen an Employee Assistance Counselor and would be in the next day. He failed to report for the remainder of the week, but did report on October 17. The Trainmaster's discussion with the EAP Department indicated no record the Claimant had been in contact with any EAP Counselors.

The Claimant returned to work on October 17, 1994. Based on conditions discussed above, the Claimant was directed to undergo a urine test, which proved to be positive for cocaine.

The investigative hearing followed, and the Claimant thereafter was dismissed from service. While the offense by itself can well be considered to justify the dismissal, the propriety of the Carrier's action is supported by the Claimant's disciplinary record, which includes three previous dismissals and reinstatements, including one for his refusal to submit to a urine toxicology test.

A W A R D

Claim denied.



HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: October 18, 1995