

PUBLIC LAW BOARD NO. 4402

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM

- (1) The dismissal of Track Laborer C. W. Gray for alleged violation of Rules 566 and 576 was improper, unwarranted, without just and sufficient cause and on the basis of unproven charges (System File Reg. Gang/Gr. 10 DI C. W. Gray).
- (2) The Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered, including expenses due him.

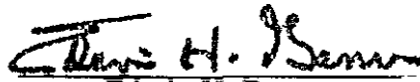
OPINION OF BOARD

As a result of charges dated May 28, 1985, investigation held on June 3, 1985, and by letter dated June 19, 1985, Claimant, a laborer, was dismissed for being under the influence of a controlled substance.

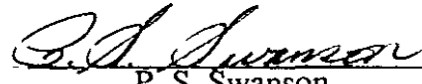
As part of the same incident described in Award 6 of this Board, Claimant, who was present at the time of that incident, agreed pursuant to the Carrier's request to provide a urine sample on May 20, 1985, which tested positive for the presence of cannabinoids. For the reasons set forth in Award 6, we are of the opinion that substantial evidence exists in the record to support the allegations against Claimant. We are also of the opinion in this case that Claimant should be permitted to return to service, but only after he passes a return to duty physical examination and drug test, successfully completes an Employee Assistance Program as designated by the Employee Assistance Counselor and does not test positive for drugs for a twelve month period from the date of his return to duty.

AWARD

Without prejudice to either party's positions concerning the right of the Carrier to test for drugs or the validity of such tests as determinative of the issues raised in the claim, Claimant shall be returned to service with seniority unimpaired but without compensation for time lost subject to the specific physical examination and drug testing requirements and conditions set forth in the Interim Award dated July 26, 1988.


Edwin H. Benn
Neutral Member


E. J. Kallinen
Carrier Member


P. S. Swanson
Organization Member

Denver, Colorado
December 7, 1988

