

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 104

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Eastern Region, Trackman B. L. Oliver from service was unjust.
2. That the Carrier now reinstate Claimant Oliver with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of Investigation held 10:00 a.m., on December 14, 1998 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

On November 24, 1998, the Carrier wrote Claimant as follows:

"...Arrange to attend formal Investigation...at 1000 hours on December 14, 1998, for the purpose of ascertaining the facts and determining your responsibility, if any, for possible violation of Section 12.0 of the Burlington Northern Santa Fe Policy on the Use of and Drugs, effective October 15, 1996 for failure to abide by the instructions of the Employee Assistance Program regarding treatment.

You are removed from service effective immediately pending formal investigation...."

Following the Investigation, which Claimant elected not to attend, he was dismissed

from the services of the Carrier.

The Investigation was attended by two people, the Hearing Officer and the representative. Claimant receipted for the Investigation notice, but, apparently, opted not to attend, nor did he bother advising either the Carrier or his representative that he could not or would not be present.

Carrier's policy on drugs and alcohol is that a first time violator of Rule 1.5 can waive his rights to an investigation agreeing to a suspension from service pending notification by the Employee Assistance Manager to the Carrier's Medical Department that he/she is released to resume active duty, provided the individual has completed the recovery process within 365 days from the date of the suspension.

If Claimant does not complete the program within 365 days or fails to abide by the program or the instructions of the Employee Assistance Manager, the individual will be dismissed providing such charges are proven in an investigation.

Claimant agreed to the conditions imposed upon first time violators of Rule 1.5 on September 29, 1997, following positive test for cannabinoids.

On November 10, 1998, the Medical Department received notification from Claimant's Employee Assistance Counselor that Claimant had dropped out of the treatment program.

Pursuant to Section 12 of the Carrier's Drug and Alcohol Policy, if proven, this is a dismissible offense.

The Carrier produced substantial evidence of Claimant's culpability for the charges assessed. Furthermore, with Claimant exercising his option to not attend the investigation, Carrier's evidence is unrefuted. The discipline of dismissal is affirmed by this Board.


AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: March 26, 1999