

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 108

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on December 30, 1998, the Carrier dismissed Mr. G.A. Martinez for the alleged violation of Rule 6.2 and 12.0 of the Burlington Northern Santa Fe's Policy on the Use of Alcohol and Drugs, effective October 15, 1996, in connection with his alleged testing positive for alcohol for the second time within a ten-year period.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority restored, he shall be paid for all wages lost and discipline shall be removed from his record.

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.

There exists an Agreement between the parties providing that individuals testing positive for a controlled substance or alcohol the second time within a ten year period will be dismissed.

Claimant tested positive for marijuana on November 13, 1997. On December 18, 1998, he again tested positive for a controlled substance, this time cocaine.

Claimant went to an independent laboratory on December 18, 1998, for his own test - which was negative. The Carrier rejected the second test contending cocaine metabolite clears out of the system in one to three days.

If Claimant protested the laboratories findings, he could have requested that the second

portion of the sample be tested at a different lab, but he did not.


Claimant's dismissal by the Carrier was provided for in the Agreement.

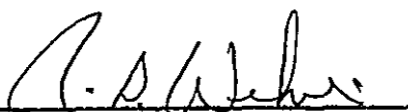
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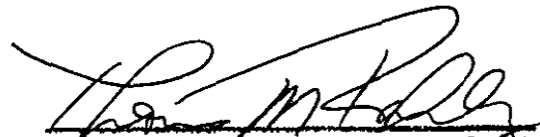
Claim denied.

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: 6/28/99