

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 113

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 November 17, 1998, the Carrier issued a Dismissal to Mr. Ron C. Baker for the alleged violation of Rules 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 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.

This involves Claimant testing positive for alcohol and/or a prohibitive drug for the second time within a ten year period. Claimant first tested positive on September 25, 1997. The second positive test occurred October 30, 1998.

In this latest positive test, the Organization questioned the chain of custody, but the Carrier verified the sample tested was Claimant's after reviewing a copy of the lab's custody and control form.

When Claimant was advised that his October 30, 1998, test was positive, he was advised of his right to have a portion of the sample that was retained and untested, tested at a laboratory he selects from a list furnished by the Carrier, but he must bear the cost of the

second test.

At first, Claimant requested the sample be returned to him, which was refused. Then, Claimant ignored the Carrier's advice concerning his right to have a portion of the original sample tested at another lab, and proceeded to be tested by a lab that was not an approved lab. The later testing, even at an approved lab, even if negative, does not mitigate the positive findings in the October 30, 1998, test. The system does over time flush out impurities, and any prohibitive substance in his system on October 30, could have been dissipated by the time he secured the second test.

The penalty for a second positive test within ten years is dismissal.


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: 6/29/99