PUBLIC LAW BOARD NO 5850

Award No.
Case No. 142

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the current Agreement when dismissing Mr. Marvin Tso from service for his alleged violation of Rule 1.5 of the Maintenance of Way Operating Rules and Sections 6.2 and 12.0 of the BNSF Policy on the Use of Alcohol and Drugs in connection with his alleged second time positive test for alcohol.

2. As a consequence of the Carrier's violation referred to above, the Claimant shall be returned to service, the discipline shall be removed from the Claimant's personal record, and he shall be compensated for all wages lost in accordance with the Agreement.

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 August 6, 1999, Claimant failed an Intoxilyzer test. As of 11:42 AM on August 6, 1999, when the test was given, Claimant's test results showed the presence of alcohol in his system.

Claimant was suspended from service pending the results of an investigation which, after several postponements, was scheduled to be held at 10:00 AM railroad

time at Flagstaff, Arizona, on September 19, 1999. At 2:15 PM, the investigation convened as the parties waited patiently for Claimant to show or at least call advising why he was not in attendance. Claimant did not notify anyone of the reason he would not be in attendance. Thus, the investigation was held without Claimant.

The August 6, 1999, test that Claimant failed came to be as a result of Claimant being under the influence of alcohol in April, 1999, and being reinstated conditionally in June of 1999. Part of the conditional reinstatement agreement signed by Claimant was that he would be subject to random testing for a period of five years from the date reinstated to service.

As has been stated before, Claimant had the option to attend the investigation or to stay home. Claimant's option to stay away from the investigation left the evidence, which was substantial, uncontested.

This is Claimant's second violation of Rule 1.5 and it occurred only months after being conditionally reinstated. The Carrier's determination to dismiss Claimant under the circumstances outlined herein will not be disturbed.

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.

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Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli, Labor Member

Thomas M. Rohling, Carrier Member

Dated: August 25, 2000