

**PUBLIC LAW BOARD NO 6860**

**Award No.  
Case No. 156**

**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 March 23, 2000, Mr. Robert R. Pumphrey was dismissed from service for alleged violation of Section 7.9 of the Carrier's policy on the Use of Alcohol and Drugs, effective September 1, 1999, in connection with his allegedly failing to comply with the instructions of the EAP Coordinator following his return to work after testing positive for alcohol on March 20, 2000.**
- 2. As a consequence of the Carrier's violation referred to above, Mr. Pumphrey shall be reinstated with seniority, vacation, all other rights unimpaired, 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 March 20, 2000, Claimant, in a random breathalyzer test (a condition of employment Claimant agreed to following his first positive test for alcohol on March 17, 1999), tested positive for alcohol.**

**Pursuant to an existing agreement, employees who test positive for drugs or alcohol a second time within a ten year period suffers termination of seniority and**

employment without the need of Carrier instituting disciplinary measures. In other words, no hearing.

There was some argument advanced that Claimant ingested some alcohol based medication and another argument about a breathalyser malfunction. The breathalyser is sophisticated enough to screen out alcohol based medicines, and the only malfunction was the machine's batteries had run too low. This was overcome by plugging it into a wall socket with an adapter. The machine was functioning properly and Claimant tested positive for alcohol.

Claimant's termination from service was consistent with the current agreement.

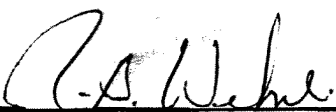
**AWARD**


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: Feb. 27, 2001