

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 193**

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

**(The Burlington Northern Santa Fe Railroad (Former
ATSF Railway Company)**

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on September 5, 2001, when it dismissed Mr. J. Mix from service for allegedly violating Maintenance of Way Operating Rule 1.5, and the Carrier Policy on the Use of Alcohol and Drugs, sections 3.1 and 7.9, when he allegedly tested positive a second time within a 10 year period.
2. As a consequence of the Carrier's violation referred to above Mr. Mix shall be returned to service, the discipline shall be removed from his personal record and he shall be compensated for all wages lost, if any, 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 September 11, 2001, the Carrier advised Claimant his seniority and employment were terminated for testing positive for a banned substance. Since it was Claimant's second positive test within ten years, pursuant to an existing Agreement, Claimant was terminated.

In June, 1996, Claimant tested positive for using a controlled substance. Claimant

then placed himself in the hands of the Medical Department and was subsequently reinstated. The positive test September 5, 2001, was Claimant's second positive test within ten years. Upon finding the results, the Carrier immediately terminated Claimant's services. Carrier's action in terminating Claimant's employment and seniority was entirely within the framework of an existing Agreement.

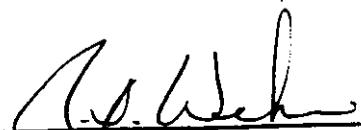
AWARD

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. Wehri, Labor Member


Thomas M. Rohling, Carrier Member

Dated: May 29, 2002