

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 248**

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 July 10, 2003, when it dismissed Claimant, Mr. J. C. Estrada, For violating the Carrier's Policy on the Use of Alcohol and Drugs a second time within 10-years, a violation of Maintenance of Way Operating Rule 1.5, and the Letter of Understanding dated June 24, 1991.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately reinstate the Claimant to service with benefits and seniority unimpaired and make him whole for all wages lost account of this violation. Additionally, the Carrier shall remove any mention of this incident from the Claimant's personal 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.

On September 21, 1999, Claimant failed a drug and alcohol test. He agreed to enter rehabilitation, and on November 17, 1999, he agreed to certain conditions to return to service. He was advised he may very well face dismissal if he was to be found guilty of any one or more of certain specified conditions, one of which reads:

"...Possession of alcohol, controlled substance, illegally obtained drugs, adulterant substance or drug paraphernalia on BNSF property obtained

under any circumstances...within 10 years of a confirmed positive test either for any controlled substance or alcohol...."

Also, his return contained the caveat that he would be tested randomly for drugs and/or alcohol for the next five years.

On July 2, 2003, as a result of a random test, he tested positive for alcohol. His services were then terminated effective July 10, 2003, pursuant to an existing Agreement.

Carrier's actions in terminating Claimant were proper.

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


William L. Yeck, Carrier Member

Dated:

2/27/04