

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 269**

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 19, 2004, when it terminated the Claimant, Mr. R. Valenzuela's seniority without an investigation, when he allegedly violated the Carrier's Policy on the Use of Alcohol and Drugs, a second time within a 10-year period, when he failed a follow-up breathalyzer test on July 15, 2004.**
- 2. As a consequence of the violation referred to in part (1), the Carrier shall immediately return the Claimant to service, remove any mention of this incident from his personal record, and make him whole for any wages lost account of this violation.**

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 July 19, 2004, the Carrier wrote Claimant as follows:

"I have been advised...that you have violated the Carrier's Policy on Use of Alcohol and Drugs by testing positive for a controlled substance and/or alcohol twice within the past ten (10) years.

Carrier records disclose that you tested positive for an illegal substance (marijuana) on December 15, 1999. You tested positive for alcohol on a random test performed on July 15, 2004.

The return to active service letter that you signed on February 25, 2000 clearly states that a second drug or alcohol violation within ten (10) years will subject you to dismissal.

For the reason stated above, effective immediately, you are dismissed from the service of the Burlington Northern Santa Fe Railway. If you dispute this

action taken, a claim may be filed on your behalf for reinstatement, which must be presented within sixty (10) days from the date of this letter pursuant to the letter of Understanding dated June 24, 1991, between the Carrier and Brotherhood of Maintenance of Way Employees."

Claimant's Representative did file a claim protesting the findings as Claimant contends that he used Listerine and Benzadent without realizing the alcohol content of each. He protested the findings indicating the urine test done after the breathalyzer was negative.

Carrier's Manager of Medical Support and Services stated residual mouth alcohol will dissipate within 15 minutes. The same Manager did write it would be possible to have an alcohol positive test from Listerine, but the Claimant would have to drink it, not just rinse his mouth.

On the day Claimant was tested, he registered .061% and fifteen minutes later, the second test registered .053%. Clearly, Claimant did not stay alcohol-free as he agreed he would when he was reinstated on a conditional basis following his first violation of Carrier's Drug and Alcohol Policy.

Claimant was given one chance in early 2000 to continue his career with the Carrier. He has failed. Carrier's action in terminating Claimant's employee rights was in accordance with existing Rules and Agreements. Such action will not be disturbed by this Board.

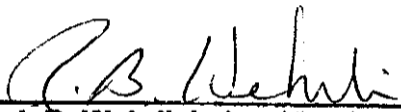
AWARD

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: May 2, 2005