PUBLIC LAW BOARD NO. 5850

Award No.
Case No. 278

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on April 12, 2005, when it dismissed the Claimant, Mr. J. R. Pearson, later reduced to an actual suspension for a violation of Maintenance of Way Operating Rule 1.5 Drugs & Alcohol.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately restore the Claimant to service, remove any mention of this incident from his personal record, and make him whole for all lost wages.

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.

A Carrier employee reported what he believed to be a vehicle in an area that had suffered some vandalism and he thought that it might have been abandoned. He contacted a member of Carrier's police who investigated and found the doors unlocked, keys in the ignition. The Patrolman called the Roadmaster and together they reviewed the car's contents. The Roadmaster testified as follows:

> "There was a bag in the back seat that had gloves and other BNSF tools or, or working apparatus in it, cooler in the front passenger seat, and a bag of ice or part of a bag of ice and a couple cans of beer. There was also a trash bag or something underneath the driver steering wheel with an empty

beer carton (inaudible)."

Further examination turned up Claimant's checkbook, but the car registration was not in Claimant's name although testimony was to the fact that Claimant was in the process of buying the car.

When Claimant was questioned about the beer in the car, he at first denied it was his, but after further questioning he admitted it was his (although at the investigation his brother, who owned the car, testified it was his beer, not Claimant's; that he bought it the day before).

Claimant testified that he picked up the car around 2100 the day before and drove it to work the next morning leaving home around 0400.

Claimant was tested for banned substances and was cleared. He had not consumed any alcohol before reporting for work or while working, but the alibi set forth by Claimant and his brother at the investigation is not credible.

The beer (2 cans) was found in the front passenger seat. The ice chest was on the floor on the passenger side and a trash bag on the floor on the driver's side that contained one ~~empty~~ empty beer carton.

It is not understood how such debris on the passenger side of the front seat and the trash bag on the driver's side on the floor could be overlooked.

Claimant has been with the Carrier 32 years. He surely knew that alcoholic beverages, whether consumed or even carried onto the property, was a violation of the Rules. If the beer was not his, but his brother's, he should have disposed of same before leaving the car on Carrier's property.

Violation of Carrier's alcohol and substance abuse Rules are severe violations

and the Carrier obviously takes the enforcement of its Rules seriously.

Even though Claimant has 32 years of service and one congratulating letter in his record, the 30 days out of service he has been assessed is not deemed harsh.

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: 9/29/05