

PUBLIC LAW BOARD NO. 5850

Award No. 280
Case No. 280

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 February 16, 2005 when it dismissed Claimant, V. Ruiz, for allegedly testing positive for drugs/alcohol a second time within 10 years.**
- 2. As a consequence of the violation referred to in part (1), the Carrier shall immediately return the Claimant to service with seniority vacation and all other rights restored, remove any mention of this incident from his personal record, and make him whole for any wages lost beginning February 16, 2005 forward.**

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 February 18, 2005, the Carrier wrote Claimant the following letter terminating his employment:

"Dear Mr. Ruiz:

I have been advised by the Carrier's Medical Department, that you have violated the Carrier's Policy on the Use of Alcohol and Drugs by testing positive for alcohol, during a follow up drug and alcohol test on Wednesday, February 16, 2005. Furthermore, Carrier records disclose that this is the second in a ten year period that you tested positive under the Carrier's policy. The first violation occurred on April 9, 2001, when you tested positive for Cocaine.

In accordance with Carrier's stated policies and practices, Carrier shall dismiss from service employees who have more than one confirmed positive test for alcohol or a controlled substance, obtained under any circumstances, during any 10-year period. Therefore, effective immediately the Carrier is terminating your seniority and employment with the Burlington Northern Santa Fe Railway.

Pursuant to the Letters of Understanding dated June 24, 1991, and December 29, 2003, between the Carrier and the Brotherhood of Maintenance of Way Employees; if you dispute this action, a claim for your reinstatement may be filed on your behalf within sixty (60) days from the date of this letter.

Please acknowledge receipt by signing and dating the second copy of this letter and returning it in the enclosed self-addressed envelope.

Arrange to return all Company property and any Amtrak transportation passes in your possession."

As outlined in the aforequoted termination letter, Claimant had the right to and did file a timely claim. The February 16, 2005, drug and alcohol test was done randomly pursuant to the understanding the Carrier reached with the Claimant following his first failed test pursuant to the following letter:

"You have satisfactorily completed the necessary requirements following your positive test. Please be advised that you are now subject to periodic testing for a period of five (5) years from the date you return to work. When a follow-up test is required, you will be notified by the proper authority. Before you may return to active service, it is your responsibility to contact your supervisor and comply with any other conditions that have been set forth as a result of your positive test.

Violation of any one of more of the following conditions will subject you to dismissal:

- More than one confirmed positive test either for any controlled substance or alcohol, obtained under any circumstances during any 10-year period.
- A single confirmed positive test either for any controlled substance or alcohol obtained under any circumstances within three years of any 'serious offense' as defined by the Burlington Northern Santa Fe 'Policy for Employee Performance Accountability.'

- Failure to abide by the instructions of the Medical & Environmental Department and/or Employee Assistance Program regarding treatment, education and follow-up testing.
- Failure to provide a urine or breath alcohol specimen without a valid, verified medical explanation.
- Adulteration, substitution or dilution of urine samples.
- Possession of alcohol, controlled substance, illegally obtained drugs, adulterant substance, or drug paraphernalia on BNSF property obtained under any circumstances as follows:
 - within 3 years of any 'serious offense' as defined by the Burlington Northern Santa Fe 'Policy for Employee Performance Accountability', or
 - within 10 years of a confirmed positive test either for any controlled substance or alcohol, or
 - involving a criminal conviction."

Claimant signed the above statement wherein he indicated he read and understood the conditions under which he had regained his seniority for the first violation.

Claimant's services were terminated pursuant to two Letters of Understanding, one date June 24, 1991, and the other dated December 29, 2003.

The claim filed in Claimant's behalf lacks evidence that the failed drug test was in error. Pursuant to the aforementioned two Letters of Understanding, Carrier's actions 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
Dated: April 26, 2006


Samantha Rogers, Carrier Member