

**PUBLIC LAW BOARD NO. 5850**

**Award No. 281  
Case No. 281**

**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 April 22, 2005 when Claimant, S. R. Harroz, was dismissed for 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 reinstate the Claimant's 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 April 22, 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 April 22, 2005, the Carrier terminated Claimant's employment and seniority rights when they did direct to Claimant the following letter:**

**"Mr. Harroz:**

**I have been advised by the BNSF Medical Department that you have violated the BNSF Policy on Use of Alcohol and Drugs, effective September 1, 2005, by testing positive for a controlled substance on a follow-up test conducted on April 11, 2005. Furthermore, BNSF records disclose that this is the second time within a ten (10) year period that you have tested positive under the BNSF Policy on the Use of Alcohol and Drugs. The first violation occurred on January 13, 2004.**

In accordance with the Carrier's stated policies and practices, BNSF 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 ten-year period. Therefore, effective immediately your seniority and employment with the Burlington Northern Santa Fe Railway is terminated.

Pursuant to 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 60 days from the date of this letter."

As outlined in the aforementioned letter, Claimant had 60 days from the date of the letter to file a claim. Claimant did timely file. The random test on April 11, 2006, was done pursuant to a Letter of Understanding Claimant read, understood and signed to regain his seniority and employment rights following the January 13, 2004, failed drug test.

Following is a partial portion of the understanding reached between Claimant and the Carrier on February 27, 2004, following the first failed drug test:

"Dear Mr. Herroz:

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.

I have read and understand the above conditions.

Employee Signature /signed/ Date 02-27-04  
Sammy R. Herroz; Employee Number: 6376078

From the aforementioned, Claimant knew the action the Carrier would take if he failed to abide by the reinstatement pledge he signed indicating he read and understood the conditions. The Carrier was fully within its Agreement rights to terminate Claimant's seniority and employment.

**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  
Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli  
Rick B. Wehrli, Labor Member

Samantha Rogers  
Samantha Rogers, Carrier Member

Dated: April 26, 2006