

PUBLIC LAW BOARD NO. 5850

Award No. 282
Case No. 282

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 June 7, 2005 when Claimant, C. D. Morris, was dismissed for violating Section 7.4 of the BNSF Policy on the Use of Alcohol and Drugs, for refusal to test.
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 June 7, 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.

Claimant was off work in excess of six months. The Carrier's policy requires a drug and alcohol test before returning to work. Claimant was scheduled for such a test on March 29, 2005. He appeared promptly and on his first attempt to provide sufficient urine that could be tested was unsuccessful.

Pursuant to Rules governing drug and alcohol testing, if the individual does not furnish a sample quantity to be tested, he/she has three hours in which to do so.

Claimant's three-hour window commenced at 0731. From 0731 until 1050, he

drank approximately 40 ounces of liquid. He also walked around the building twice, yet he could not, or did not, furnish a sufficient quantity of urine at one time that could be tested.

Claimant was referred to a doctor to determine if Claimant had any physical ailments or a shy bladder that hindered his ability to furnish a sufficient amount of urine that could be tested. After the doctor's examination, the Carrier was advised Claimant did not have a medical impairment that would prevent him from furnishing the required amount of urine.

The Carrier then wrote Claimant on April 14, 2005, advising an investigation was established to determine his, "responsibility, if any, for refusing to participate in required testing after being properly notified...."

Following the investigation, the Carrier on June 7, 2005, wrote Claimant as follows, advising him that:

"...as a result of formal investigation that was held on May 10, 2005, concerning your refusal to participate in required testing after being properly notified; you are dismissed from employment for violation of Section 7.4 of Burlington Northern Santa Fe Policy on the Use of Alcohol and Drugs, dated September 1, 2003."

During the investigation, Claimant's Representative argued that the Claimant did not refuse to participate as charged by the Carrier in its charge letter. He just simply could not produce a sufficient quantity of urine that could be tested.

The employee who cannot or will not furnish sufficient urine during a three-hour period is considered refusing to participate in the drug testing; unless, of course, there exists a medical reason why it could not be accomplished.

The on-property handling of the claim on Claimant's behalf argued Claimant did

not refuse to participate and challenged the medical findings of no physical impairment, arguing the doctor who performed the physical and found nothing, did an inadequate physical.

This Board will not challenge the medical doctor's findings.

To this Board, the termination of Claimant's employment and seniority was fully justified pursuant to terms and conditions of its Drug and Alcohol Policy.

The discipline will not be challenged.

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


Samantha Rogers, Carrier Member

Dated: April 26, 2006