

PUBLIC LAW BOARD NO. 5850

Award No. 283
Case No. 283

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 14, 2005 when it dismissed Claimant, S. George, 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 all time lost beginning July 14, 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 July 14, 2005, the Carrier wrote Claimant as follows:

"I have been advised by the BNSF Medical Department that you have violated the BNSF Policy on the Use of Alcohol and Drugs, effective September 1, 2003, by testing positive for alcohol on a follow-up test conducted on July 13, 2005. Furthermore, BNSF records disclose that this is the second time within a ten-year period that you have tested positive under the BNSF Policy on the Use of Alcohol and Drugs. The first violation occurred on April 15, 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 BNSF 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."

Claimant did timely file a claim, but nothing was brought forward or established that the test was in any way flawed.

The two Agreements referred to in Carrier's letter to Claimant permits them to terminate seniority and employment rights of anyone who fails a second drug test within 10 years of the first failure.

After Claimant's first failed drug test on April 15, 2004, he regained his seniority and employment rights by agreeing to certain terms as contained in a letter he signed indicating he read the letter and understood the terms of his return to service. That letter reads as follows:

"Dear Mr. George:

This letter will confirm that as a result of conference on April 18, 2004, concerning your testing positive for alcohol during a reasonable suspicion test conducted April 15, 2004, Phoenix, Arizona, you are issued a Level S conditional suspension effective April 19, 2004, for your violation of Rule 1.5 of the Maintenance of Way Operating Rules, effective January 31, 1999, as supplemented or amended and BNSF Policy On use of Alcohol and Drugs dated September 1, 2003.

This suspension is conditional based upon: 1) your first-time violation of Rule 1.5 of BNSF Policy On Use of Alcohol and Drugs, 2) your placing yourself into the Employee Assistance Program, 3) your full compliance with the program and with all instructions issued you by the Employee Assistance manager.

You must contact the Employee Assistance Manager within 5 days for evaluation and/or treatment. Your treatment must commence within 45

days from the start of your suspension. All applicable rules for return to work must be complied with as outlined in the BNSF Policy On Use of Alcohol and Drugs.

Your suspension will be considered served when you are released to active service by the Medical and Environmental Health Department upon the recommendation of the Employee Assistance Manager, provided it is within 60 days from the date this suspension commences. Failure to receive a favorable recommendation by the end of the 60 day period, or failure to abide by the instructions or program set forth by the Employee Assistance Manager and/or the Medical and Environmental Health Department, will automatically result in dismissal if such charges are proven in a separate formal investigation."

Carrier termination of Claimant's employment and seniority rights was an action sanctioned by the two letter Agreements referred to in Carrier's termination letter to Claimant.

This discipline will not be modified.

AWARD

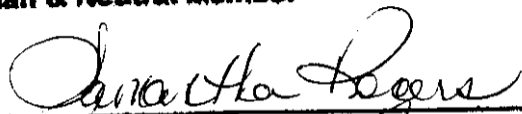
Claim denied.

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