PUBLIC LAW BOARD NO. 5850

Award No. 298
Case No. 298

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 November 8, 2006 when Claimant, J. C. Hecker, was dismissed for a violation of Maintenance of Way Operating Rule 1.5 when he failed to comply with instructions from the EAP Manager, and the conditions of his conditional suspension; and

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 unimpaired, remove any mention of this incident from Claimant's personal record, and make Clamant whole for all time lost commencing November 8, 2006.

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 October 10, 2005, the Carrier wrote Claimant advising him that an investigation was being scheduled:

"...for the purpose of ascertaining the facts and circumstances concerning your failure to comply with the guidelines of the Waiver you signed on May 6, 2005 and failure to comply with instructions of the Employee Assistance Manager regarding treatment and education for substance abuse.

Arrange for representative and/or witnesses, if desired, in accordance with governing provisions of prevailing schedule rules.

This is to advise you that you are being withheld from service pending results of the investigation...."

On November 6, 2005, the Carrier wrote Claimant advising him his "seniority and employment with the Burlington Northern Santa Fe Railway Company is hereby terminated effective the date of this letter...."

On April 21, 2005, Claimant tested positive for prohibited drugs, waived his rights to an investigation and agreed to follow the instructions of the EAP personnel. As directed, Claimant did enter a drug rehabilitation program but received an unsatisfactory report when he failed to complete the program.

Because he violated the terms of his conditional suspension, the Carrier set up the investigation referred to in the start of this Award.

A review of the transcript finds Claimant admitting he did not follow the instructions of the Medical & Environmental Health Department.

The burden of proof in disciplinary cases is upon the shoulders of the Carrier, but when Claimant admitted he did not follow the instructions, the burden of proof was clearly established. Claimant pleads for one more chance, but because of his behavior this time, the plea will be denied.

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. Hicka, Chairman & Neutral Member

David D. Tanner

David D. Tanner, Labor Member

Samantha Rogers

Samantha Rogers, Carrier Member

Dated: 6/21/2007