PUBLIC LAW BOARD NO. 5850

Award No.
Case No. 303

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 when Claimant, W. C. Hart, was dismissed on April 10, 2006 for failure to comply with the terms and conditions in 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 Claimant whole for all time lost commencing February 21, 2006.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employes 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 August 29, 2005, the Carrier wrote Claimant advising an investigation was being convened, "for the purpose of ascertaining your positive drug screen on August 15, 2005."

Claimant did not show up at the investigation convened. Thus, insofar as this Board is concerned, the evidence presented by the Carrier which is substantial stands without challenge.

According to the investigation, Claimant had been off on a medical leave and sought return to service. Since he was off in excess of six months, part of the medical exam he was to undergo was a drug test. The test revealed the presence of a banned substance. He was not permitted to return to service. Since he was seeking to return to his job, he was given a final chance. Claimant was instructed to contact the Employee Assistance Manager. Outlined to Claimant were the Company's guidelines to regain employment status, and he had to agree to a set of stringent rules. One demand was that he was to contact the Assistance Manager in the Employee Assistance Program.

Claimant did contact the Assistant Manager, but he did not comply with the instructions he received. Note the following testimony of a Carrier witness:

> "The above identified employee (Claimant) failed to actively comply with proper instructions from the Medical and Environmental regarding treatment...."

The Carrier reacted swiftly to the above incident. Claimant was dismissed. This Board concurs with Carrier's decision.

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

David D Tanner
David D. Tanner, For the Employees
Dated: November 9, 2007

Samantha Rogers
Samantha Rogers, For the Carrier