

**PUBLIC LAW BOARD NO. 5850**

**Award No.  
Case No. 310**

**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 when Claimant, S. P. Fisher, was dismissed on June 9, 2006 for obtaining a 2<sup>nd</sup> level S violation within 36 months when he tested positive for a controlled substance on January 18, 2006; 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 January 18, 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 January 24, 2006, Carrier wrote Claimant as follows:

"The results of your Reasonable Cause test conducted on January 18, 2006, revealed the presence of a controlled substance. As a result of this positive drug test, you are not allowed to perform any service for BNSF Railway until further notice.

The Medical & Environmental Health Department will request your supervisor formally remove you from service, pending results of an investigation to determine if you have violated the BNSF Policy on the use

of Alcohol and Drugs, dated September 1, 2003."

After mutual postponements, the investigation was held on May 10, 2006.

Carrier did on June 9, 2006, write Claimant advising his seniority and employment rights were terminated.

The investigation itself is different in that only two individuals were recorded in depth: the Interrogating Officer and Claimant's Representative. Claimant's Representative quoted segments of Carrier's Drug and Alcohol authority and the Interrogating Officer read into the record Claimant's failed drug test result.

No objection was raised of the propriety of the investigation when the Interrogating Officer read into the record Claimant's test results. Ordinarily, such happenstance could very well derail the investigation, and probably would have had it not been for a letter Claimant wrote the Division Engineer, reading in part as follows:

"I would like you to know I accept full responsibility of what I did.  
There is no one to blame by myself...."

With the aforementioned letter read into the record, with no objection thereto voiced by Claimant, the letter of admission of guilty supports wholeheartedly Carrier's obligation to furnish sufficient evidence of Claimant's guilt. Without that letter, the whole investigation could readily have been voided as denying the employee a fair trial.

Furthermore, with Claimant having one prior serious Rules violation on his record, the Carrier clearly followed its established guidelines of dismissal.

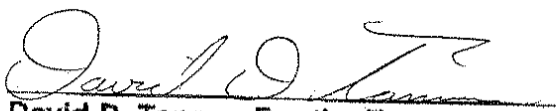
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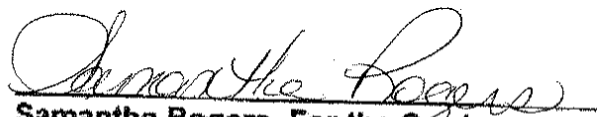
Claim denied.

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

  
David D. Tanner, For the Employees

  
Samantha Rogers, For the Carrier

Dated: March 10, 2008