

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 317**

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

**(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)**

STATEMENT OF CLAIM:

- 1. The Carrier violated the Agreement when Claimant, S. L. Chambers, was dismissed on November 20, 2006 for alleged violation of BNSF Policy on the Use of Alcohol and Drugs when Claimant tested positive for drugs on September 18, 2006. This was Claimant's second serious rule violation within 36 months; 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 October 10, 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.

There is no dispute over the charges and the Carrier's sufficient evidence of Claimant's culpability for the charges assessed. What is perplexing is Carrier's refusal to grant Claimant, as a first-time violator of the Drug and Alcohol Policy, a waiver which many employees have been granted.

There is nothing in his disciplinary file that precludes offering the waiver except

the incident in 2005, when Claimant failed to comply with instructions when he failed to maintain safe braking distance while assigned as a Machine Operator. He was assessed a 30-day record suspension. If the Carrier believes this a serious Rule violation, why was not the discipline heavier. A record suspension with no lost time is only a half step more serious than a formal reprimand.

Both Claimant and his Representative asked why the waiver was not granted. They received no response. In the appeal of the dismissal of Claimant, they asked why the Carrier was ignoring the waiver procedure. There was no response thereto. The Board has no grounds upon which it can determine why the waiver was not granted.

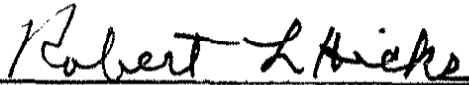
Regarding the discipline of dismissal for a violation of the Rule on the property; however, Claimant has been out of service since September 22, 2006. His seniority rights are hereby reinstated, but he will not be permitted to use those rights until he contacts the EPA and follows their program. Failure to contact the EPA or failure to follow their guidelines will result in a permanent loss of seniority and employment rights. There is no pay for any lost wages.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member



David D. Tanner, For the Employees

Dated:

June 30, 2008



Samantha Rogers, For the Carrier