

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 325**

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 9, 2007 when Claimant, C.C. Sage was dismissed for testing positive for alcohol a second time within 10 years during a follow up test; 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 July 9, 2007.**

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 9, 2007, a follow-up test under the Drug and Alcohol Policy revealed Claimant tested positive for alcohol.

Claimant's first violation of the Drug and Alcohol Policy occurred July 11, 2006. He received a conditional suspension upon his agreement to abide fully and completely with all the instructions issued by the Employee Assistance Manager.

He successfully complied and was advised on August 31, 2006, after signing a set

of conditions for his return to service that he was reinstated to service.

One of the conditions to which he agreed was that if he had any confirmed positive test for any controlled substance or alcohol within any ten year period, he would be dismissed. To reiterate, his first positive test for alcohol was July 11, 2006. The second positive test was July 9, 2007.

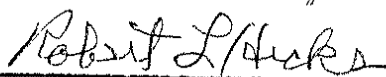
Claimant thus violated the conditions of his reinstatement following his first violation. The Carrier acted properly as provided for in existing Agreements.

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



David D. Tanner, For the Employees

Dated:

August 27, 2008



Samantha Rogers, For the Carrier