

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 369**

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 May 26, 2009 when Claimant, M. N. McLin (1996738) 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 May 26, 2009.

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.

Past performances of Claimant has led to his dismissal from the Carrier without a hearing.

In May of 2007, Claimant was reinstated on a conditional basis as he had tested positive for a banned substance.

He was taken out of service then, but he was able to regain his working status by agreeing to certain conditions guiding him to a life without using alcohol or any other banned substances as long as he was working for the Carrier.

One such condition was immediate dismissal for a second positive test within ten

years of the first test without a hearing. Claimant knew full well what to expect when he signed the list of conditions.

On May 26, 2009, Claimant violated one of the conditions.

This Board fully supports the action taken by the Carrier as it is supported by 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


Samantha Rogers, For the Carrier

Dated: 11/8/10