PUBLIC LAW BOARD NO 5850

Award No.
Case No. 5

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

Carrier's decision to dismiss Central Region Maintenance of Way employee M. M. Ortiz, effective October 23, 1995 was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from October 23, 1995. (Files 95-11-160/140-1312-9513)

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.

The Carrier's Drug and Alcohol Policy clearly stipulates that:

"Those employes who have tested positive in the past ten (10) years would be subject to dismissal whenever they test positive a second time"

The parties have agreed that:

"...an employe who is subject to dismissal under the aforequoted provisions...shall be notified in writing by Certified Mail, Return Receipt requested, to the employee's last known address, copy to the General Chairman, of termination of his seniority and employment...."

Claimant, in November of 1994, tested positive for a prohibitive substance and was placed on medical leave. He was permitted to resume service on January 9, 1995, with the proviso that for the next two years he would be subject to random testing. On August 9, 1995, he tested positive and

following a timely held Investigation, he was dismissed from all service with the Carrier.

The Carrier has substantiated its charge and has conclusively established Claimant's culpability. This being the second time within ten years, Claimant's dismissal was in accordance with Agreement Rules.

The fact that the first evaluation determined that Claimant was not in need of rehabilitation does not negate the Understanding of June 24, 1991, that employees testing positive for the second time within ten years will be terminated. Claimant should have been fully cognizant of the consequences of testing positive a second time. The discipline was prescribed in the Agreement. It will not be disturbed.

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 and Neutral Member

C. F. Foose
Labor Member

Greg Griffin
Carrier Member

Dated 8/19/96