

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 64

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated Rule 13, and Appendix No. 11, when A. A. Nunez was dismissed from service based on he allegedly tested positive as a result of a random drug screening on November 17, 1997.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to service with all seniorities, vacation and benefit rights restored and compensated for all wage loss beginning November 26, 1997, and continuing.

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 employees 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 further agreed that:

"...an employee who is subject to dismissal under the aforequoted provision...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 tested positive for marijuana in November, 1996, and again in November, 1997.

Pursuant to the aforequoted excerpts from the agreed to implementation of the Drug and Alcohol Policy, Claimant, on November 26, 1997, was advised that his seniority and employment were terminated.

Claimant was fully appraised of the consequences should he be found in violation the second time within a ten year period. Carrier's action in terminating Claimant's seniority and employment,

under the circumstances outlined in the on-property handling, was entirely proper and was pursuant to the Understanding in place. The discipline of termination 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 & Neutral Member


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: April 6, 1998