

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 73

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on December 17, 1997, the Carrier dismissed Mr. T. L. Allen for allegedly violation of Rules 1.5 -- Drugs and Alcohol of Maintenance of Way Operating Rules, effective August 1, 1996, Section 12 of the Carrier's Policy on use of Drugs and Alcohol and Rule S-28.5 -- Drugs and Alcohol of the Safety Rules and General Responsibilities for All Employees, effective March 1, 1997 in connection with his alleged testing positive for amphetamines on October 31, 1997.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be paid for all time lost, and the discipline removed from his record.

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.

Claimant, as a result of a random test for prohibitive drugs, tested positive for amphetamines and methamphetamines. When the results of the drug test were made known to the Carrier, Claimant was immediately suspended from service pending the outcome of an investigation. Following the investigation, Carrier converted Claimant's suspension to a dismissal.

Claimant's Representative vigorously challenged Carrier's right to hold an investigation alleging a late notice, challenged Carrier's selection of Claimant for the random test, and questioned the testing process itself.

Regarding the time limit argument, the agreement does mandate a hearing to be scheduled within 15 days of the date of suspension. On November 13, Claimant was suspended, the investigation was scheduled for November 21, 1997, well within the limits. Due to a death in Claimant's family, a request was made for a postponement, and on November 21, 1997, Claimant

was advised that the Investigation was rescheduled for December 2, 1997.

If the December 2, 1997 date had been the first date selected for the Investigation, the time limit argument of the Organization would be valid, but once postponed by mutual agreement, the time limits are also tacitly waived.

Regarding the challenge to Carrier's random selection, it is clear that the selection was by position number. Such selection method did not violate any policy, and regarding the process, wherein the Organization attempted to invalidate the medical testing process by stating that the Med Tax form selection sheet indicated Winslow, Arizona, as the cite of the collection, rather than the actual point collection, Carrier adequately addressed that issue attesting Winslow being the Headquarters point was used, rather than the actual point of collection.

The Organization protested that Claimant did not have a copy of the agreement. Carrier agreed that perhaps he did not have one, but he had been advised of the drug policy.

Although the representation of Claimant was vigorous, it is not sufficient to overcome the evidence. The Board finds no fault with the testing process. Claimant did test positive for prohibitive drugs. He had also tested positive in June, 1988. The penalty for a second positive test within a ten year period is dismissal.

AWARD

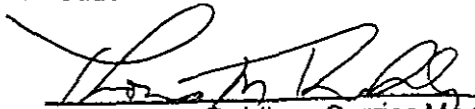
Claim denied.

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: June 12, 1998