

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 93

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 April 27, 1998, the Carrier issued a dismissal to Armando Gonzales for alleged refusal to submit to a drug urine test and violation of Rules S-28.1, S-28.1.2, S-28.5, and S-28.6 of the Safety Rules and General Responsibilities for All Employees, effective March 1, 1997 (and as revised April 15, 1997); and Rules 9.2.1, 9.2.2, and 12.0 (C) of the BNSF Policy on the Use of Alcohol and Drugs.
2. As a consequence of the Carrier's violation referred to above, Claimant's seniority shall be restored, he shall be paid for all wages lost and discipline shall be 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.

After Claimant sustained an injury, he was advised at the Doctor's office he had to be tested for drugs. Although he had submitted to a Breathalyzer Test, which was negative, he refused to furnish the necessary sample for a drug test. Again, in his Supervisor's office, after being treated for his injury (three broken toes), he again refused to submit to a drug test.

As a result, he was cited for his refusal and dismissed following a timely held investigation.

During the investigation, Claimant's representative did all that was possible to defend his client, but to overcome an outright refusal to submit to a drug test not once, but twice, would require a defense beyond even Perry Mason's ability.

There was a great deal of testimony about how the injury occurred, was there or was

there not a proper job briefing, was Claimant aware that he was not to touch the bent rail until the welders had removed the stress of the rail, whether he was held up 30 to 45 minutes before receiving medical services. Also was discussed the effect of the pain and the pain killer (Tylenol with codeine) had on Claimant's mental state when he refused to submit to a drug test, and whether he was aware of the consequences of his refusal.

These were defenses raised in an effort to derail the disciplinary process, but not one such argument individually or collectively can overcome the basic fact that Claimant refused not once, but twice to submit to a drug test. Clearly, the testimony recorded in the transcript reflects that Claimant was advised after each time he refused to take the drug test of the possible consequences, but he still refused.

The Carrier's action in dismissing Claimant was not in violation of the Discipline Rule. Substantial evidence was adduced to establish Claimant's culpability for the charges assessed. The offense was serious. The dismissal was the only recourse.


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: December 18, 1998