

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Santa Fe Railway (former St. Louis-
(San Francisco Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the current Agreement when dismissing Mr. S. A. Groves from service on November 12, 1997, for his alleged violation of Rule 1.5 and his failure to comply with Section 12.0 of Carrier's Policy on the use of Drugs and Alcohol.
2. As a consequence of the Carrier's violation referred to above, Mr. Groves shall be returned, the discipline shall be removed from the Claimant's personal record, and he shall be compensated for all wages lost in accordance with the Agreement.

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.

On March 10, 1997, Claimant tested positive for a prohibitive drug. Pursuant to Carrier's Drug and Alcohol Policy, after returning to service following the first positive test, Claimant had agreed to submit to random testing for a period of five years following his reinstatement.

On November 4, 1997, Claimant again tested positive for a prohibitive drug.

Upon receipt of his dismissal letter, a hearing was held at Claimant's request, after which he was found culpable for the charges assessed with Carrier upholding the dismissal.

Claimant and his representative questioned the validity of the test contending he did not use any prohibitive drug, and it would have been foolish for him to do so knowing full well

that he had to submit to random testing at any time.

The Board does agree that after one failed test and accepting the condition of random testing that it would be foolish to indulge a second time, but it has happened to others in the past and will undoubtedly happen again in the future unless the addict can do a 180° turn on his personal habits.

The questioning of the reliability of the test, the chain of handling of the sample, have been questions raised before in earlier cases without success as the facility used is one used by the FRA and is certified in its handling and testing.

Claimant did, 15 days after the second positive test, submit to his own testing which was negative. There is not, however, any evidence that the testing laboratory Claimant used was certified, and secondly, there was a 15 day lapse between the date Claimant furnished his second positive test for the Carrier and the date of the negative test he did on his own. The second examination proves nothing as the system works to clean out unusual chemicals. In 15 days only untraceable amounts, if any at all, would remain in his system.

In the opinion of this Board, the November test for Claimant was proper and done by a laboratory certified by the FRA. The procedures followed were the same as used over the years and are now well entrenched and accepted.

The Carrier's dismissal was not in violation of any schedule rules and/or agreements. 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

Robert L. Hicks, Neutral Member & Chairman
Public Law Board 6103

Dated: April 30, 1999

