

**PUBLIC LAW BOARD NO. 6538**

**Carrier File No. 10-00-0652  
Organization File No. C-00-D070-11**

**BROTHERHOOD OF MAINTENANCE )  
OF WAY EMPLOYEES )**

**And )**

**BURLINGTON NORTHERN )  
SANTA FE RAILWAY )**

**AWARD NO. 5  
CASE NO. 5**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The dismissal of Welder D. M. Perkins for his alleged positive test as indicated by the results of FHWA CDL follow-up Test #2543820 which was conducted on July 5, 2000 was without just and sufficient cause and in violation of the Agreement.**
- (2) As a consequence of the violation referred to in Part (1) above, Welder D. M. Perkins shall now be returned to service with seniority unimpaired, paid for all wage loss suffered from July 12, 2000 until he is returned to service and his record cleared of the incident.”**

**FINDINGS:**

**Public Law Board No. 6552, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.**

**Claimant entered Carrier’s service on July 10, 1978. He maintained an unblemished record until July 1999, when he tested positive for a controlled substance. Claimant signed a waiver in accordance with the Carrier’s Drug and Alcohol Policy. The waiver stipulated that he would be subject to dismissal if he was found to be in violation of the policy within ten years.**

**On July 5, 2000, Claimant was instructed to submit to follow-up testing. Claimant was advised on July 12, 2000 that the drug test was positive for marijuana and he was removed from service pending investigation.**

The investigation was held in absentia on July 21, 2000. On August 7, 2000, Claimant was dismissed from service.

Carrier advances several cogent arguments in support of its determination that discharge was fully justified. It correctly points out that there were no procedural irregularities in the handling of the case. Further, the signed waiver agreement should be enforced, Carrier argues. The dismissal action was fully contemplated under the terms of the waiver and in accordance with Carrier's drug and alcohol policy.

Balanced against those forceful arguments are additional factors raised by the Organization which must be taken under consideration. Claimant is a long term employee with 22 years of good and faithful service to the Carrier. These mitigating circumstances should weigh heavily in making a determination about the appropriate penalty, the Organization submits.

There is no question that Carrier has proven Claimant's guilt by substantial evidence. Neither the validity nor the reliability of the drug test results has been challenged. Moreover, we find no basis for invalidating the discipline based on procedural grounds. Thus, the real crux of this case centers on the remedy. The Board is mindful of the serious concerns arising from the use of drugs by employees in the workplace. Carrier has taken steps to deter drug use and it has a reasonable expectation that employees who violate the drug and alcohol policy will be severely disciplined.

We recognize that, as a second time violator, Claimant would ordinarily be subject to dismissal. However, under the unique and particular circumstances of this case, we believe that, if given one final chance, Claimant can redeem himself as a valuable employee. Claimant must understand, however, that compliance with the following conditions is crucial to his employment with the Carrier. Failure to comply with these conditions will result in immediate dismissal without investigation.

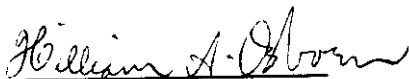
The Board finds that Claimant shall be returned to service, with no back pay, provided that he complies with all instructions issued by the EAP and upon certification by the EAP of Claimant's qualification to return to work. Upon his return, Claimant must pass all Carrier's attendant physical examinations. Further, he shall be subject to periodic random drug and alcohol testing at Carrier's discretion, for a period of ten years following his return to active service. Failure to comply with the EAP, and/ or a violation of Carrier's drug and alcohol policy within ten years following the issuance of this Award, shall result in immediate dismissal on a non-referable basis.

**AWARD**

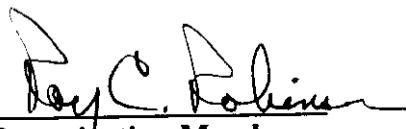
**Claim sustained in accordance with the Findings.**



**ANN S. KENIS, Neutral Member**



**Carrier Member  
William A. Osborn**



**Organization Member  
Roy C. Robinson**

**Dated April 10, 2003.**