

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NUMBER 6986

BNSF RAILWAY COMPANY

(Former St. Louis – San Francisco Railway Co.)

(Carrier)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

(Organization)

PLB No. 6986 Case No. 10
Carrier File No. 12-07-0118
Organization File No. B-3096-3
Claimant: W.C. Eckles

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on October 12, 2007, when Claimant W.C. Eckles was dismissed for testing positive for a controlled substance on September 11, 2007, his second such violation within a 10-year period violating Maintenance of Way (MOW) Operating Rule 1.5
2. As a consequence of the Carrier's violation referred to in part (1) above, the Claimant should be returned to service, paid for all lost time, and that all references to this incident shall be removed from Claimant's personal record.

This claim was discussed in conference between the parties.

An investigative hearing was held on October 4, 2007 at the Division Office Building in Memphis, Tennessee before Calvin Bray, Conducting Officer of this investigation.

NATURE OF THE CASE

The Claimant is employed as an Assistant Foreman, Hump Yard Inspector at or near Memphis, Tennessee. The Claimant was terminated from his employment following a test on September 11, 2007 after testing positive for a controlled substance for the second time within a ten-year period in violation of Maintenance of Way Operating Rule 1.5. The Claimant attended this hearing, and was represented by Rick Sandlin, General Chairman, Frisco Federation, Brotherhood of Maintenance of Way Employees.

The Organization contends that the Claimant did not fail a random drug test on September 11, 2007, because this was a follow-up drug test, as the Claimant had previously tested positive for a controlled substance on July 17, 2006. According to the Organization, the investigation should be stopped because of this inconsistency in the paperwork, and the Claimant should be put back to work.

The Organization contends that the Claimant was never charged with violating Rule 1.5, but charged with failing a second random drug test. The Organization further contends that the Claimant cannot properly be charged for failing a second random drug test when he was not subjected to a random drug test. The parties were unable to resolve their dispute within the grievance procedure, and the matter was appealed to adjudication before Public Law Board No. 6986.

FINDINGS AND OPINION

The Carrier's direction to the Claimant to submit to a test on September 11, 2007 was fully justified by the conditions under which he averted termination in July, 2006. Whether the distinction between this test and a random test raised by the Organization is purely semantic need not be resolved by the Board, as the Carrier was entitled under the prior agreement preserving the Claimant's employment to impose a follow-up test at the time of the Carrier's choice. Similarly, the absence of any observable symptoms of intoxication or impairment does not preclude asking the Claimant to submit to a drug screen, given the Claimant's participation in the EA Program and the other conditions imposed in July, 2006. Thus, the Claimant was legitimately and properly tested on September 11, 2007, when his test result was positive for cocaine or the metabolites of cocaine. This test result demonstrated

persuasively and conclusively that the Claimant violated Maintenance of Way Rule 1.5 for the second time.

Maintenance of Way Operating Rule 1.5 provides that:

The use or possession of alcoholic beverages while on duty on Company property is prohibited. Employees must not have any measurable amount in their breath or in their bodily fluids when reporting for duty, while on duty, or while on Company property. The use or possession of intoxicants, over the counter or prescription drugs, narcotics, controlled substances or medication that may adversely affect safe performance is prohibited while on duty or on Company property, except medication that is permitted by a medical practitioner and used as prescribed. Employees must not have any prohibited substances in their bodily fluids when reporting for duty, while on duty, or while on Company property.

An employee who fails a drugs test, whether random, follow-up, or for cause, violates Maintenance of Way Rule 1.5. Therefore, the semantic differential urged by the Organization as a basis for invalidating the Carrier's disciplinary action cannot be sustained.

The Carrier's determination that the Claimant's second proven violation of Maintenance of Way Rule 1.5 justified terminating Claimant W.C. Eckles from all employment was neither arbitrary nor capricious. Therefore, the instant grievance is hereby denied.

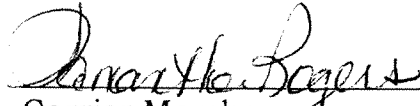
We so find.



Daniel F. Brent
Daniel F. Brent, Impartial Chair

Dated: 9-26-08

I concur. () I dissent.



Carrier Member 1

Dated: 10/21/08

() I concur. I dissent.



Organization Member

Dated: 10/01/08