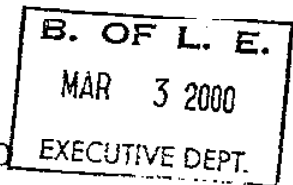


Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION



Award No. 25087
Docket No. 44789
00-1-98-1-B-2136

The First Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(The Burlington Northern and Santa Fe Railway
(Company

STATEMENT OF CLAIM:

"Engineer Kennedy be reinstated immediately with seniority unimpaired; paid for all time lost, and that the notation relative to this incident be removed from his personal record."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On June 8, 1997, Claimant was assigned as a Brakeman at Dilworth, Minnesota. He was called on duty at 1:30 A.M. and arrived at his destination at 11:30 A.M. Upon arrival at Minot, North Dakota, the entire crew was selected for random breath and urinalysis tests, as mandated by FRA regulations. The results of Claimant's tests revealed that he had cannabinoids in his system. He was directed to appear at a hearing into the matter. A hearing was held on July 11, 1997. Claimant was held out of service as of June 17, 1997, pending

establishment of the hearing date. As a result of the hearing, Claimant was found guilty of two violations of Carrier's drug and alcohol policy and was dismissed from service. An appeal of Claimant's dismissal was denied at all levels by Carrier and was progressed to this Board for review and final resolution.

As noted, Claimant tested positive for illegal drugs in June 1997. His record also reveals that he tested positive (as the result of a routine physical examination) for a controlled substance in July 1987. Carrier concluded that Claimant's two positive tests in ten years justified his removal from service under its current alcohol and drug policy put into effect on October 15, 1996, after the merger of the Burlington Northern and the Santa Fe railroads. Prior to October 1996, Claimant was subject to the Burlington Northern Rule G Bypass Program; since October 1996, he was subject to the BNSF alcohol and drug program. Under the Rule G Bypass Program, an employee found guilty was dismissed from service. If the employee had not been found to have violated Rule G in the past ten years, he or she was given the opportunity to seek reinstatement through participation in the Company's Employee Assistance Program. Claimant was not offered that chance under the old program. Under the current drug and alcohol program, an employee can be dismissed from service if he or she tests positive for controlled substances or alcohol under any circumstances. Those employees who have positive results twice in ten years will not be eligible for reinstatement under Carrier's EAP policy.

Thus, while Claimant tested positive in July 1987 (under the old BN policy), he was not charged with a Rule G violation. He then tested positive in June 1997 under the new policy. Carrier reviewed his total record and discovered that his medical records contained information about the July 1987 positive test. Coupled with the new positive test, Carrier concluded that Claimant had tested positive twice in ten years. He was dismissed from service with no chance for reinstatement under any program.

This Board has carefully reviewed the record in this matter and has concluded that Carrier has not acted in an appropriate manner in this instance. Carrier has used a notation from Claimant's medical records regarding his positive test for a controlled substance in 1987 as a first offense in the disciplinary ladder. There is no mention of this incident in Claimant's service record, nor was he ever charged in any manner concerning the 1987 positive test. Carrier should

not have counted the 1987 incident in applying the current drug and alcohol policy. This policy states that two positive tests in ten years justifies permanent dismissal from Carrier's service. This Board concludes that justice would be served in this case by allowing Claimant to seek reinstatement to service under Article 5.0 of the Carrier Drug and Alcohol Policy, with seniority restored, but without pay for lost time or benefits.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 24th day of February, 2000.