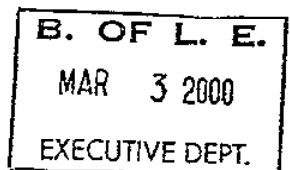


Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION



Award No. 25089
Docket No. 44797
00-1-99-1-B-2137

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

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

STATEMENT OF CLAIM:

"Engineer Kinslow 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 May 9, 1997, Claimant D. W. Kinslow was assigned as a Brakeman on Train 48NN018-08, Minot, North Dakota, to Dilworth, Minnesota. Upon arrival at Dilworth, Claimant was subject to FRA-mandated random breath and urinalysis tests. Claimant was later advised by telephone from Carrier's Medical Director that he had tested positive for cannabinoids.

A hearing in the matter was held on June 20, 1997. As a result of that hearing, Claimant was found in violation of Carrier's alcohol and drug policy.

Section 12.0 states that two positive drug tests within ten years bars an employee from service with Carrier. Claimant's medical records contain an indication that in January 1988, he was subject to a probable cause urinalysis test and was tested positive. This first incident was not recorded in Claimant's personnel record, nor was any form of discipline administered as a result of the test. Carrier, however, used this incident as an initial offense when dismissing Claimant for having tested positive twice in ten years, in accordance with its policy under the current alcohol and drug policy.

Based on its review of the record and consideration of numerous awards on the subject, this Board has concluded that Carrier acted inappropriately when, under the conditions that existed in this instance (the merger of the Burlington Northern and Santa Fe and the replacement in October 1996 of the Burlington Northern Bypass Program with the current alcohol and drug program), it counted the 1988 incident noted in Claimant's medical record as a legitimate Rule G or Rule 1.5 incident when no investigation or charges were made a part of Claimant's record. This Board has concluded that Carrier can make its point in this instance by allowing Claimant to seek reinstatement to service under Section 5.0 of the alcohol and drug policy. This reinstatement shall be with seniority intact, but without pay for lost time and 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.