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NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25345

Docket No. 45112

02-1-01-1-B-2164

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: (

(Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

"Engineer Culver be reinstated immediately with seniority unimpaired; paid for all time lost with full benefits restored, 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.

Claimant M. R. Culver was employed as an Engineer at Kansas City, Missouri. On November 19, 1999, he was instructed to participate in a random drug/alcohol test. On December 3, 1999, the Claimant was advised that his urine drug test taken on November 19 contained an adulterant. The Claimant was immediately taken out of service and charged as follows:

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"Mr. M.R. Culver
3008 Jennifer Lane
St. Joseph, Missouri 64506-1019

Attend formal investigation to be held Tuesday, December 21, 1999 at 1000 hours in the Superintendent's conference room, 3rd floor, 4515 Kansas Avenue, Kansas City, Kansas, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged tampering with urine sample by adulteration when you were requested to provide a urine specimen on November 19, 1999 in possible violation of Section 7.9 of the Burlington Northern Santa Fe Policy on Use of Alcohol and Drugs, dated September 1, 1999 and Rule 1.6 of the General Code of Operating Rules BNSF version with Revisions No. 1, in effect April 1, 1998 (including revisions up to October 10, 1999).

You may arrange for representative and/or witnesses, if desired, in accordance with governing provisions of prevailing schedule rules.

R.H. Fox
Terminal Superintendent"

A Hearing in the matter was held on January 12, 2000, at 10:30 A.M. in the Carrier's facilities in Kansas City, Kansas. The Claimant was questioned by the Hearing Officer concerning the allegations against him. The Claimant readily admitted to adulterating the urine sample. The Claimant expressed his sorrow for what he had done and asked for another chance. The Local Chairman of the BLE made a statement on behalf of the Claimant and the Hearing Officer declared the Investigation concluded at 11:30 A.M. As a result of the Investigation, the Claimant was notified by letter on January 24, 2000, that he was dismissed from the Carrier's service. That letter is cited below:

"As a result of facts developed in formal investigation held January 12, 2000 at 1030 hours in the Superintendent's conference room, 3rd floor, 4515 Kansas Avenue, Kansas City, Kansas concerning your tampering with urine sample by adulteration when you were requested to provide urine specimen on November 19, 1999, you are dismissed from employment with the Burlington Northern Santa Fe Railroad for violation of Section

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7.9 of the Burlington Northern Santa Fe Policy on Use of Alcohol and Drugs, dated September 1, 1999 and Rule 1.6 of the General Code of Operating Rules BNSF version with Revisions No. 1, in effect April 1, 1998 (including revisions up to October 10, 1999).

Please arrange to return all Company property and any Amtrak transportation passes in your possession. A check will be issued for any moneys due you. This letter will be placed in your personal file."

A claim was filed that was denied at all levels by the Carrier and was progressed to the Board for final resolution.

This Board has read the record in this case in detail. It has also studied the Contract language involved here, the Carrier's Drug and Alcohol Policy, and the many arbitration decisions presented by both parties. As a result of that analysis the Board has concluded that permanent dismissal of the Claimant under the conditions that exist in this case on this property is not supportable at this time.

The Claimant is a ten-year employee with a clean record. He has no record of drug or alcohol abuse or any other Rule infraction that would put a mark on his record. The Claimant also admitted to the error of his way at the Investigation and took responsibility for his actions. He attended a rehabilitation program and is still participating in it. These facts place the Claimant in a category separated from the majority of employees who find themselves disciplined for violations of the Carrier's Drug and Alcohol Policy. This record contains examples of arbitration decisions where an employee's record was a major factor in the decision to return to service violators of Carrier's Alcohol and Drug Policy. Awards 7, 8, and 9 of Public Law Board No. 6284 involving the same parties and the identical issue in this case are three examples that cannot be ignored by the Board. The Carrier has also on at least two occasions cited in the record granted leniency to two employees, Mr. Larson and Engineer Gettman, allowing them to return to service. One of these employees was guilty of refusing to give a urine sample and the other of adulterating a urine sample. Given these examples on the Carrier's property, it is difficult for the Board to justify the permanent dismissal of the Claimant.

The Carrier's Alcohol and Drug Policy is based on giving employees found using alcohol or drugs in violation of the policy a chance to redeem themselves and continue

their railroad careers. In effect, they get a second chance. The Claimant in this case should be given the same opportunity.

If the Carrier intends that each and every employee found guilty of refusing to give a urine sample or adulterating a urine sample in any way is to be automatically dismissed from service regardless of past record, it should clearly convey that position to the Union and to all employees. The Carrier will then be required to consistently enforce that policy in dealing with offenders, regardless of who they are or how good their records may be.

In rendering a decision in this case, the Board does not equate the Claimant only with a first offender under the Alcohol and Drug Policy. We also view him as a violator of the Carrier's Rules addressing honesty. While we have concluded based on the total record that the Claimant should be granted a last chance to salvage his railroad career, his return to work should be under more severe conditions than would be imposed if he were a first offender of the Alcohol and Drug Policy. The Board therefore directs as follows:

1. The Claimant shall be placed in a probationary status for a period of one year. Any violation of the Carrier's Rules and Regulations that would justify termination of a probationary Engineer can also justify the Claimant's dismissal.
2. The Claimant shall be required to participate in whatever rehabilitation program the Carrier's EAP Counselor directs. Failure to comply with all terms of the program shall result in the Claimant's permanent removal from service.
3. Any violation of the Alcohol or Drug Policy on or off duty shall result in the Claimant's dismissal from service.
4. The Claimant will be subject to unannounced random alcohol and drug testing for as long as he works for the Carrier.
5. The Claimant shall be returned to service with seniority, but without pay for lost time or benefits.

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6. The Claimant should be on notice that this is his last and only chance to salvage his railroad career.

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 6th day of August 2002.