

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 26827
Docket No. 46600
09-1-NRAB-00001-070036
07-1-36

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (**(United Transportation Union**
(**(BNSF Railway Company**

STATEMENT OF CLAIM:

**“Organization File# DISP HOERSTER 1/26/05
Carrier File# 53-05-0400**

Claim in behalf of Havre, MT Conductor R. A. Hoerster for pay for all time lost, including investigation, and complete record clearance account withheld from service on January 26, 2006 (sic) and ultimately dismissed from service on February 13, 2005 for alleged violation of GCOR Rule 1.6 and BNSF Policy on the use of Drugs and Alcohol, Section 7.4 (alleged failure to participate in random drug test in Glasgow, MT as instructed by Trainmaster Dan McCaslin on January 26, 2005).”

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.

As a result of an Investigation held on February 3, 2005 the Carrier found the Claimant violated Rule 1.6 and Section 7.4 of the Policy on Use of Drugs and Alcohol. On February 13, 2005 the Carrier dismissed the Claimant from its service.

The facts in this case are that on January 26, 2005 the Claimant was at the away-from-home terminal, Glasgow, Montana. When the Claimant arrived at the Yard Office around 6:00 A.M., he was told that he would be required to take a FRA random drug and alcohol test. At 6:20 A.M. the Crew Caller notified the Trainmaster that the Claimant had laid off sick and had left the property.

The Claimant had apparently fallen sometime during the night and went to the local hospital. In the process of examining the Claimant a blood test was taken which showed an alcohol level of .0789.

It is obvious that the Claimant came to work with the intent of working back to his home terminal. When he learned that he was required to take a drug and alcohol test, he left the railroad to avoid the test.

The Carrier met its burden of proving that the Claimant violated its Rules. At the time of the incident the Claimant had only 13 months of service. There is no reason for the Board to alter the Carrier's actions in this case.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

Form 1
Page 3

Award No. 26827
Docket No. 46600
09-1-NRAB-00001-070036
07-1-36

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 2nd day of April 2009.