

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42271  
Docket No. MW-42142  
16-3-NRAB-00003-120408**

**The Third Division consisted of the regular members and in addition Referee Louis V. Imundo, Jr. when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference**

**PARTIES TO DISPUTE: (**  
**(BNSF Railway Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (dismissal) imposed upon Mr. R. Ryan by letter dated July 25, 2011 for alleged violation of BNSF Railway Policy on the use of alcohol and drugs, dated April 15, 2009 and MOWOR 1.5 Drugs and Alcohol in connection with a probable cause testing on Monday, May 16, 2011 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File T-D-3951-H/11-11-0360 BNR).**
- (2) The claim as presented by Vice General Chairman A. R. Hohbein on August 26, 2011 to Mr. R. Ebel, Twin Cities Division General Manager shall be allowed as presented because said claim was not disallowed by Mr. R. Ebel in accordance with Rule 42A.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Carrier shall now “\*\*\* remove any and all mention of the discipline from Mr. Ryan’s record, restore him to service immediately, and make Mr. Ryan whole for any and all losses.”**

**FINDINGS:**

**The Third 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.

The Claimant freely made an admission against his own interest. The record contains nothing to prove that (1) the drug test standing alone was unreliable, (2) the Claimant's urine sample was contaminated or mislabeled, or (3) the test result was incorrect. Consequently, the Board determined that the Carrier proved that the Claimant was guilty of the charged misconduct. The Claimant's past record coupled with the seriousness of his misconduct dictates that his dismissal was the appropriate discipline. Accordingly, the claim must be denied.

**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.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 21st day of April 2016.