

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42705
Docket No. MW-43258
17-3-NRAB-00003-150521**

The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.

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

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Welder T. Carr by letter dated August 13, 2014 for alleged violation of ‘... BNSF Railway Policy on the use of Alcohol and Drugs, dated April 15, 2009, and MWOR 1.5 Drugs and Alcohol.’ in connection with his alleged ‘... positive “”Breath Alcohol test as a result of a random test on April 4, 2014....’ was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-14-D070-9/10-14-0341 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Carr shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be made whole for all wage loss suffered.”**

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 Carrier notes that on April 14, 2014 Claimant Carr tested positive for alcohol for the second time in a year and he has admitted his violation of the relevant Carrier policy. His seniority and service do not excuse the violation. There are no procedural or due process defects that would warrant sustaining the claim. However, if the claim is sustained, the Claimant should be made whole only for lost seniority and wages, with outside earnings subtracted from wages due.

The Organization notes that the Carrier's policy does not mandate dismissal, that the Claimant comes from a family with a history of alcoholism, is himself an alcoholic and suffers from major depression and PTSD. He has completed inpatient rehabilitation and continues with outpatient rehabilitation, has turned his life around and deserves another chance. The claim should be sustained and the Claimant should recover lost seniority, wages and other benefits, without consideration of outside earnings.

On May 30, 2013, the Claimant tested positive for alcohol and thereafter waived Investigation and accepted a conditional suspension. As required, Claimant Carr enrolled in the Employee Assistance Plan (EAP), successfully completed the program and returned to service under a number of conditions that if violated would subject him to dismissal. Particularly relevant was the condition that he not test positive "for any controlled substance or alcohol obtained under any circumstances during any ten-year period."

On April 4, 2014, having been randomly selected for testing, the Claimant tested positive for alcohol. During the Investigation he admitted the violation and the Organization has not contested the accuracy of the random test or the validity of the results. The Board accepts at face value the honest explanation advanced by both the Claimant and his Organization that Claimant Carr comes from a family with a history of alcoholism, that he suffers from PTSD, that he is a long-time

alcoholic and that he has gone through inpatient treatment and continues intensive outpatient therapy. In the Claimant's words, he hit rock bottom and has turned his life around.

The Board is impressed with the Claimant's honesty, the insight he has gained into his condition and his attempt to confront and overcome his disease. Surely his life going forward looks brighter than his past. Nevertheless, with the second positive test in less than a year, the Claimant violated his return-to-work agreement, the Carrier's Policy on the Use of Drugs and Alcohol and MOWOR Rule 1.5 Drugs and Alcohol. In so doing, he subjected himself to dismissal. In this inherently dangerous industry in which working safely is critical, the Carrier's decision to enforce the back-to-work agreement cannot be viewed as arbitrary and capricious and thus the Board cannot justify substituting its judgment for that of the Carrier.

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 12th day of July 2017.