

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44654
Docket No. SG-46257
22-3-NRAB-00003-200332**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(BNSF Railway Company (Former Burlington Northern
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of A.M. Holman, for reinstatement to service with compensation for all time lost, including overtime pay, with all rights and benefits unimpaired, and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of dismissal against the Claimant, without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on December 10, 2018. Carrier's File No. 35-19-0006. General Chairman's File No. 19-003-BNSF-33-K. BRS File Case No. 16119-BNSF. NMB Code No. 16.”

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.

At the time this dispute developed, the Claimant was assigned to a Signalmen position on Gang SSCX 0206 working out of Amarillo, Texas. On October 26, 2018, following a crew relocation to Morrison, Claimant self-reported to his Foreman, Ryan Smith, that he was unfit for duty and requested a vacation day. Next, the Claimant contacted the Emergency Assistance Program ("EAP") to seek help.

Supervisor Sparks came to Morrison and found the Claimant off property trying to get a ride to Stillwater. Sparks gave the Claimant the choice to take a drug test or take an unexcused absence. The Claimant elected to take the drug and alcohol test. The first test conducted showed a 0.087% blood alcohol content. The second test, administered 15 minutes later, showed a 0.082% blood alcohol content. Both percentages are above the allowed limit under BNSF's Policy on Use of Alcohol and Drugs.

On October 26, 2018, the Claimant was given notice of an investigation in connection with the following charge:

Arrange to attend investigation...to develop the facts and circumstances concerning your alleged positive test results for alcohol during your BNSF Cause Test while assigned to SSCX 0206 on October 26, 2018 at approximately 1230 hours and alleged violation of BNSF Policy, Rules, and Procedures on the use of Alcohol and Drugs.

After a formal investigation on December 10, 2018, the Claimant was found in violation of BNSF Policy, Rules, and Procedures on the use of Alcohol and Drugs, and ESR 28.5 Drugs and Alcohol, and was dismissed from the Carrier's service.

By letter dated March 2, 2019, the Organization presented a claim to the Carrier which was denied by letter dated April 26, 2019. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Carrier contends that it has presented substantial proof that the Claimant violated BNSF Policy, Rules, and ESR 28.5 Drugs and Alcohol. The

Carrier contends that the Claimant's BAC level when he reported to work on October 26, 2018, was in excess of the allowable limit. The Carrier contends that it has shown that the Claimant was in violation of its Policy on the Use of Alcohol and Drugs, § 3.1:

While on BNSF property, on duty, or operating BNSF work equipment or vehicles, no employee may:

- Use or possess alcohol;
- Report for duty or remain on-duty or on property when his or her ability to work safely is impaired by alcohol, controlled substances or illegally obtained drugs;
- Report for or remain on duty or on property with a blood or breath-alcohol concentration greater than or equal to 0.02%;
- Report for or remain on-duty or on property while exhibiting symptoms of alcohol or illicit or illegally obtained drugs.

In addition, ESR 28.5 states, in part:

Drugs and Alcohol

The use or possession of alcoholic beverages while on duty or on company property is prohibited. Employees must not have any measurable alcohol in their breath or in their bodily fluids when reporting for duty, while on duty, or while on company property....

The Carrier contends that Claimant admitted that he reported to duty under the influence of alcohol on October 26, 2018. The Carrier contends that where there is an admission of guilt, there is no need for further proofs.

The Carrier contends that the penalty of dismissal was appropriate as Claimant showed a degree of carelessness to safety towards himself and others. Furthermore, the Carrier contends, this was not the Claimant's first incident of reporting to work under the influence of alcohol, nor was it the Claimant's first discipline. On March 13, 2018, the Claimant received a Formal Reprimand with a 12-month review period. On July 6, 2018, Claimant received a Level S with a 36-month review period. Claimant was still under the review period when this incident occurred.

The Carrier contends that BNSF's Policy for Employee Performance Accountability ("PEPA") classifies this type of violation as a serious one. The

assessed discipline was consistent with the nature of the offense, Claimant's records, and arbitral precedent. Further, under PEPA Policy § C(2)(b), "If an employee commits an additional Serious Violation within the Review Period, he or she may be subject to dismissal."

The Organization contends that the Carrier failed to follow clear provisions under its coworker reporting procedure in the Use of Alcohol and Drugs Policy. The Carrier should have granted the options under this procedure to the Claimant.

The Organization contends that the disciplinary penalty is unduly harsh. The Organization contends that it is clear that the Claimant is suffering from the disease of alcoholism and that he took measures through EAP to rehabilitate himself. the Claimant's status as a veteran who suffered from PTSD resulting from combat-related trauma should mitigate the discipline and should have been considered by the Carrier in determining the appropriate disciplinary response.

In this case, there is no dispute that when the Claimant reported for duty on October 16, 2018, he was under the influence of alcohol. He admitted this during the on-property investigation and the testing confirmed that he had a BAC greater than or equal to 0.02%. Where there is an admission of guilt, there is no need for further proof. This Board finds that the Carrier presented sufficient evidence to support the findings against the Claimant.

The only issue still in dispute is whether the Carrier showed sufficient cause to dismiss the Claimant, or whether he should have been offered an opportunity to waive the investigation and contact the EAP Manager for assessment. Although this option is one afforded to employees under the coworker reporting procedure, the Carrier contends that the Claimant did not meet the criteria. Furthermore, the Carrier points out that the Claimant was not a first-time offender and thus was ineligible for any additional indulgence by the Carrier.

The Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious. Although the Organization argued that the disciplinary penalty should be mitigated, we find that the evidence is insufficient to warrant reconsideration of the Carrier's determination. the Claimant was previously given a second chance to address his alcoholism but still reported for duty under the influence of alcohol on October 16. This Board cannot say that the Carrier's decision was unreasonable under the circumstances.

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 15th day of December 2021.