

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44673
Docket No. MW-46433
22-3-NRAB-00003-200770**

The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.

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

PARTIES TO DISPUTE: (

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Claimant C. Kelley, by letter dated March 8, 2019, for violation of MWOR 1.5 Drugs and Alcohol for alleged positive test results for a controlled substance on his return to duty test from previously confirmed positive test on October 10, 2018 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-19-D070-5/10-19-0176 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Kelley shall have his record cleared of the charges leveled against him and be reinstated in accordance with rule 40.”**

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, Motor Vehicle Operator Chad Kelley has been employed by the Carrier since May 19, 2003. The Claimant was dismissed on March 8, 2019, for violating Maintenance of Way Operating Rule ("MWOR") 1.5, Drugs and Alcohol, and the Corporate Policy, Use of Alcohol and Drugs (hereinafter referred to as the "Policy"), on November 29, 2018, and following an Investigation held on February 14, 2019. The Carrier maintains that the Claimant's positive return-to-duty drug test result on November 29, 2018, violated his conditional suspension agreement following a previous positive drug test result of October 10, 2018, where he agreed not to test positive again for 10 years.

Before reaching the merits of the dispute, the Board addresses the Organization's procedural objection alleging that the hearing officer failed to ensure the Claimant was afforded a fair and impartial hearing. A review of the record does not support the Organization's allegations.

In discipline cases, as the one before the Board here, the burden of proof is upon the Carrier to prove its case with substantial evidence and, where it does establish such evidence, that the penalty imposed is not an abuse of discretion. Upon review of all the evidence presented, the Board here finds that the Claimant violated the MWOR 1.5 and the Carrier's Policy when he tested positive for a controlled substance on November 29, 2018. The record does not contain any reliable or credible evidence for the Board to ignore the drug test results that were conducted in accordance with federal regulations.

A review of the record confirms that the Carrier has applied a penalty consistent with its disciplinary policy. Legions of arbitral awards in the industry have consistently held that the Carrier, where not limited by the Controlling Agreement, has the discretion to implement rules and policies that ensure workplace safety and that its employees remain drug and alcohol free. Further, there is no evidence that the Carrier abused its discretion in dismissing the Claimant.

The Board here finds that the Carrier has met its burden of proof with substantial evidence and, therefore, its decision to dismiss the Claimant is upheld.

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 28th day of January 2022.