

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees  
and  
Burlington Northern and Santa Fe Railway  
(Former ATSF Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on May 25, 2004, when it withheld the Claimant, Mr. M. C. Reyes, from service and then dismissed him after an investigation for allegedly violating BNSF's Policy on the Use of Alcohol and Drugs, a second time within 10-years.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately return the Claimant to service, remove any mention of this incident from his personal record, and make him whole for any wages lost account of this incident. [Carrier File No. 14-04-0125. Organization File No. 10-1312-048.APP].

FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees ("Parties") herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the dispute herein.

The Claimant, Mr. Martin C. Reyes, was hired by the Carrier in its Maintenance of Way Department in 1974. In August, 2003, he tested positive for alcohol in a random test, to which he was subject because he holds a Commercial Drivers License. He was reinstated to service on October 13, 2003, having satisfactorily completed the Carrier's education and treatment program for employees who violate, for the first time, its Policy on the Use of Alcohol and Drugs ("Policy"). The Claimant acknowledged, by his signature, receipt and understanding of the conditions under which he was being returned to work. He was advised that he would be subject to periodic drug and/or alcohol testing for a period of five years, and that violation of any one or more of several listed conditions would subject him to dismissal. The first listed condition reads:

More than one confirmed positive test either for any controlled substance or alcohol obtained under any circumstances during any 10-year period.

On May 25, 2004, at 8:00 a.m., Roadmaster Jim Savage received notice that the Claimant was scheduled for a follow-up test for drugs and/or alcohol. He was transported from the work site to a Carrier facility where a technician under contract to the Carrier took a urine specimen from the Claimant and administered a breath alcohol test, using a CMI Intoxilyzer 400 device. The screening test showed a breath alcohol concentration of 0.077%. After waiting 21 minutes, a confirmation test was given, which showed the concentration to be 0.067%.

As the consequence of the above test results, the Claimant was notified to attend an investigation on June 2, 2004,

[T]o develop the facts and circumstances concerning your positive breath alcohol test, while working as a Machine Operator, . . . and your alleged violation of BNSF Policy on the Use of Alcohol and Drugs, . . .

The Claimant was withheld from service pending the result of the investigation.

Following an agreed-upon postponement, the investigation was held on June 8, 2004. The Claimant was competently represented by the Organization's Assistant General Chairman. A transcript of evidence and testimony was prepared and appears in the record before this Board.

Roadmaster Savage, called as a witness, offered in evidence the alcohol breath test results. He stated that the Carrier's Policy allows zero tolerance for alcohol. (The Board notices that the Policy prohibits employees while on-duty or on-property from having a breath alcohol concentration of 0.02% or greater.)

The Claimant testified in his own behalf. He did not indicate that there was any fault with respect to the manner in which the breath alcohol test was performed, and he was unable to offer any defense to the charge. His only explanation for the positive test appears in the following answer:

132. Q. The question is did you report for duty, on the Company property with the blood alcohol concentration greater than .02 percent?
- A. No, I don't know that, no. Cause the, the day before, I don't drink that same day, you know. I don't think we got the same. If you drink the day before I don't think they got that much alcohol in system what they're saying.

At the close of the investigation, the Claimant's representative asked that the Claimant be allowed to go through the Carrier's education and treatment program and be returned to service upon completion of that program.

On June 23, 2004, the Claimant was notified of his dismissal from service for violation of the Policy. The Organization promptly appealed this decision to the Carrier's Labor Relations Department. It asserts that the discipline is "extreme, unwarranted and unjustified," and not supported by the record.

The Carrier responded that the record supports its decision, and there was no violation of the Agreement. It denied the claim.

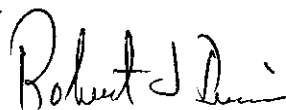
The Organization subsequently submitted documentation attesting the rehabilitation steps being taken by the Claimant through an outpatient program, and participation in the Alcoholics Anonymous programs. Finally, the Parties placed on record a recommendation from the Claimant's treating physician dated December 20, 2004.

Based on additional medical information the Parties have submitted, the unique circumstances involved in this case, and without setting any precedent, the Board will return the Claimant to service, without pay for time lost, under the following conditions:

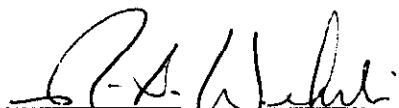
The Claimant shall meet with the Carrier's EAP Manager and develop a treatment plan based on the December 20, 2004 letter, including twice weekly AA meetings and continued close contact with his sponsor. The Claimant shall comply with this program until released by the EAP Manager. The Claimant shall be subject to all the provisions of the Carrier's Policy applicable to first time offenders, including random testing. Failure to meet any of the outlined conditions, including failure to follow the program established by the Carrier's EAP Manager, or further infraction of the Policy, shall result in the Claimant's immediate and permanent dismissal.

AWARD

The claim is sustained in accordance with the Opinion.



Robert J. Irvin, Neutral Member



R. B. Wehrli, Employee Member



William L. Yeck, Carrier Member



Date