

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6986
AWARD # 5 CASE #5**

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employees

And

BNSF Railway Company

STATEMENT OF CLAIM

- “1. The Carrier violated the Agreement on July 6, 2006, when Claimant Douglas D. Young was dismissed for testing positive for a controlled substance and/or alcohol abuse within the past ten years violating Maintenance of Way Operating Rule 1.5.
2. As a consequence of the Carrier’s violation referred to in part (1) above, the Claimant should be returned to service, paid for all lost time, and that all references to this incident shall be removed from Claimant’s personal record.”

Carrier File No. 12-06-0070

Organization File No. B-2548-4

FINDINGS

A review of the Records in this case indicates that the Claimant was notified by letter dated July 6, 2006 that he had again tested positive for alcohol in a test conducted on July 5, 2006. Further that if no investigation was requested that the Claimant would be considered terminated.

The Organization timely requested that the Carrier hold a formal investigation regarding this matter and the investigation was conducted on

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July 20, 2006.

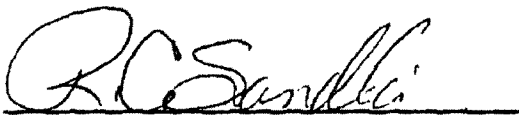
During the course of the investigation the Organization vigorously challenged the Carrier on several points especially the "probably cause" issue.

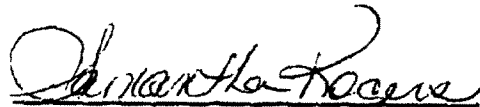
The transcript of investigation however reflects the Carrier did have probable cause for testing the Claimant and the Claimant was in effect guilty as charged. While it is sad that alcohol has ended his career with the Carrier there is no basis of record to set the discipline aside.

AWARD

Claim denied in accordance with the findings.


Don A. Hampton, Chairman & Neutral Member


R.C. Sandlin
Organization Member


Samantha Rogers
Carrier Member

DATED: May 31, 2007