

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6986
AWARD # 7 CASE #7**

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employees

And

BNSF Railway Company

STATEMENT OF CLAIM

“1. The Carrier violated the Agreement on August 23, 2006, when Claimant John E. Hoffman was dismissed for testing positive for a controlled substance and/or alcohol twice 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. 12-06-0079
Organization File No. B-2845-2**

FINDINGS

Claimant was notified by letter dated July 5, 2006 to attend an Investigation to ascertain the facts and determine his responsibility , if any, for his alleged failure of a Random Drug Test on June 13, 2006. The hearing was rescheduled for August 15, 2006 by later dated July 12, 2006.

The hearing was held on August 15 as scheduled and the Claimant and his representative were present and were permitted to ask questions of the

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witnesses.

The Organization argues that the Claimant was taking prescription and non-prescription medications that could have indicated a false positive reading when the Claimant took the random test. The Carrier however through documentation has supported their position that the Claimant has again failed a drug test. As this is his second violation within ten years the imposition of termination is called for. (The Claimant's first infraction of the Carrier's Drug Policy was in August of 2003.)

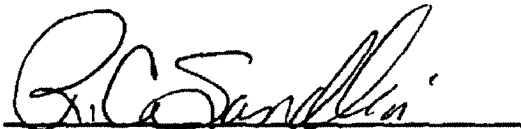
We do not find support in the record to disturb the discipline levied by the Carrier. The claim must be denied.

AWARD

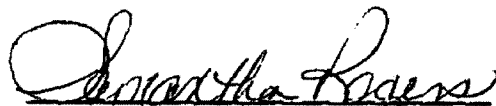
Claim denied in accordance with the findings.



Don A. Hampton, Chairman & Neutral Member



R.C. Sandlin
Organization Member



Samantha Rogers
Carrier Member

DATED:

May 31, 2007