

BEFORE PUBLIC LAW BOARD NO. 7544

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
SOO LINE RAILROAD COMPANY**

Case No. 8

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The discipline (removed and withheld from service and subsequent dismissal by letter dated May 22, 2009) imposed upon Mr. G. Hall following charges of possible violation of General Code of Operating Rule 1.5 Drugs and Alcohol and OTS Core Rule 8 ‘ . . . in connection with your alleged positive drug test results that was administered on April 23, 2009 after an alleged incident where train 199023 contacted tie plates at Mile post 57.5 at approximately 11:15 AM, causing damage to locomotive 9599 and vehicle L02RJK,’ was arbitrary, capricious, excessive and in violation of the Agreement (System File D-16-08-520-01/8-00518 CMP).
2. As a consequence of the violation referred to in Part (1) above, Claimant G. Hall shall now be allowed ‘ . . . reinstatement to service with seniority unimpaired and for all lost wages, including but not limited to all lost wages, straight time, overtime, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare and dental insurance, supplemental insurance, and any and all other benefits to which entitled, but lost as a result of Carrier’s arbitrary, capricious, and excessive discipline in terminating Claimant’s employment and Seniority under date of May 22, 2009.’”

FINDINGS:

By notice dated May 1, 2009, the Claimant was directed to attend a formal hearing and investigation to develop the facts and place responsibility, if any, in connection with an alleged positive drug test result from a test administered on April 23, 2009, after an incident that caused damage to a locomotive and a vehicle. The hearing was conducted, after a postponement, on May 11, 2009. By letter dated May 22, 2009, the Claimant was informed that as a result of the hearing, he had been found guilty of violating Carrier

rules as the result of the positive drug test, and that he was being dismissed from the Carrier's service. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the claim is not in accordance with Rules 18 and 47 of the Agreement, because the remedy sought is excessive and improper, because the Claimant was afforded his due process rights, because the facts developed support a finding of responsibility, because there is no support for the Organization's arguments, and because the discipline imposed was not excessive, capricious, arbitrary, or unwarranted. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to provide the Claimant a fair and impartial hearing, because the Carrier violated the Claimant's due process rights, because the Carrier did not submit any credible evidence that the Claimant was responsible for the April 23, 2009, incident, because the Claimant successfully had maintained sobriety for more than eighteen years and relapsed after experiencing a devastating and traumatic event in April 2009, because the Carrier wrongfully failed to afford the Claimant an opportunity to participate in the EAP, and because the Carrier's decision to dismiss the Claimant was arbitrary, capricious, excessive, and unwarranted.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Code of Operating Rule 1.5 when he tested positive for drugs after a

test was administered to him on April 23, 2009, after an accident which caused damage to a locomotive. The Claimant admitted at the hearing that he had smoked marijuana the day before, which apparently was still in his system when he was tested.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

This Board recognizes that the Claimant had lengthy service with the Carrier. Moreover, this Board also has reviewed the evidence that the Claimant had recently lost a close friend. However, rules against showing up for work under the influence of drugs or alcohol, or even having them in your system, are very clear. The Claimant admittedly smoked marijuana the night before and had that marijuana still in his system when he was tested after the accident on the date in question. Therefore, this Board cannot find that the Carrier's action in terminating the Claimant's employment was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.

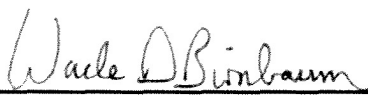


PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 9/28/2012



ORGANIZATION MEMBER

DATED: 10/12/12