

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY

Case No. 471 – Award No. 471 – Claimant: Cannavino
Carrier File No. 14-14-0004
Organization File No. 190-SF1312-1315

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing November 27, 2013, when Claimant, Joseph M. Cannavino (1740893), was dismissed for his alleged second positive test within a ten (10) year period following his testing positive following a urine sample specimen taken on November 26, 2013. The Carrier alleged violation of the BNSF Railway Policy on the use of Alcohol and Drugs.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this dismissal and he be reinstated, with seniority, vacation, all rights unimpaired and pay for all wage loss commencing November 27, 2013, continuing forward and/ or otherwise made whole.

FINDINGS:

Public Law Board No. 5850, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The Claimant, Joseph M. Cannavino, had been employed by the Carrier since 2007. He had received a Level S conditional suspension on June 15, 2012, for a Rule 1.5 (former Rule G) first violation for a positive alcohol test on June 11, 2012. The Carrier's Policy for Employee Performance Accountability (PEPA) classifies a first such violation as a "serious violation," which subjects an employee to a conditional suspension, pending Employee Assistance Program (EAP) evaluation, as described in the Carrier's drug and

alcohol policy. The PEPA classifies a second positive result within 10 years, or failure to comply with instructions of the Carrier's Medical Director), as a stand-alone dismissible offense.

On November 27, 2013, Carrier Structures Manager Stephen Hedemann sent Claimant a letter indicating that the Carrier's Medical Department had advised him that Claimant had violated the Carrier's drug and alcohol policy by testing positive on a follow-up test on November 23, 2013. He added that Carrier records indicated that this was Claimant's second violation in a 10-year period.

The letter continued that in accordance with its stated policies and procedures, the Carrier will dismiss from service "employees who have more than one confirmed positive test for alcohol or a controlled substance, obtained under any circumstances, during any 10-year period." The Carrier therefore dismissed him from service.

Letters of Understanding dated June 24, 1991 and December 23, 2003 between the parties provide that a claim disputing such a determination may be filed within 60 days, and the Organization did so on or about January 14, 2014. The Organization contended that the parties' agreement was not intended to endorse the Carrier's drug and alcohol policy, nor was it intended to allow the Carrier to dismiss employees without an investigation. The Organization challenged the discipline as extreme and an abuse of discretion, but did not challenge that the Claimant had committed the second violation as alleged.

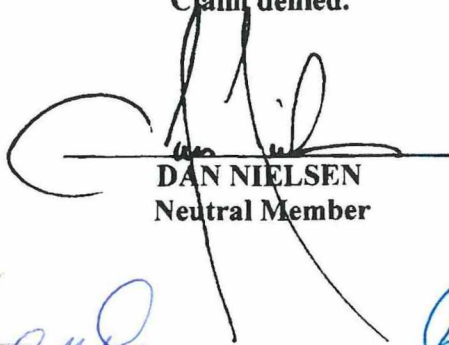
The Carrier recited that following his first positive result on June 11, 2012, Claimant completed the protocols for returning to work and signed an acknowledgement that he would be subject to dismissal for any violation of the conditions upon that return, in particular a second positive test within 10 years. He tested positive on November 26, 2013.

The Carrier contends that the parties' agreements are clear that Claimant was not entitled to an investigation, and that there is extensive on-property precedent confirming that dismissal is appropriate under these circumstances. We agree.

The Organization has not contested the positive result, or offered anything to demonstrate what could be accomplished in an investigation, even if one were required. It is well settled throughout the industry that an employee who commits a second drug/alcohol offense, violating his return to work agreement, will be subjected to summary dismissal. We see no reason to deviate from that result.

AWARD

Claim denied.



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DAN NIELSEN
Neutral Member



A handwritten signature in blue ink, appearing to read 'Joy Menendez', is written over a horizontal line.

JOY MENDEZ
Carrier Member



A handwritten signature in blue ink, appearing to read 'David Scoville', is written over a horizontal line.

DAVID SCOVILLE
Organization Member

Dated this 9th day of June, 2016.