

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 480 – Award No. 480 – Inman
Carrier File No. 14-15-0012
Organization File No. 10-SF1312-1415

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing December 10, 2014, when Claimant, Donald W. Inman (6563126), was dismissed for testing positive for controlled substance while on duty on December 1, 2014 for his second 1.5 within 10 years, first positive test occurring on April 23, 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 including overtime commencing December 10, 2014 and 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.

Claimant, Donald W. Inman, had been employed by the Carrier since 1991. He received a Level S conditional suspension on September 16, 2013, for a Rule 1.5 (former Rule G) first violation for a positive drug test on April 23, 2013. 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 December 10, 2014, Carrier Division Engineer Jimmy Capps 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 December 1, 2014. 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 the Carrier's stated policies and practices, Claimant was dismissed from service for a second positive test within 10 years, in violation of the Carrier's Policy on the Use of Alcohol and Drugs.

Letters of Understanding dated June 24, 1991 and December 29, 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 December 19, 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.

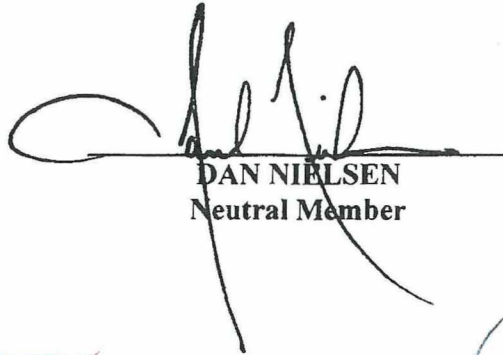
The Carrier recited that following his first positive result on April 23, 2013, Claimant completed the protocols for returning to work and signed an acknowledgement that he would be subject to dismissal for any violation of the conditions upon that return, in particular a second positive test within 10 years. He tested positive for drugs on December 1, 2014.

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. As we held in Case No. 471 on this Board, 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.

A handwritten signature in black ink, appearing to read 'Dan Nielsen', written over a horizontal line.

DAN NIELSEN
Neutral Member

A handwritten signature in red ink, appearing to read 'Alex Stadheim', written over a horizontal line.

ALEX STADHEIM
Carrier Member

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

DAVID SCOVILLE
Organization Member

Dated this 16 day of November, 2016.