

**PUBLIC LAW BOARD NO. 5850**

**Case No. /Award No. 569**

**Carrier File No.: 14-21-0302**

**Organization File No.: 2415-SL13C5-2136**

**Claimant: A. Baca**

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**BNSF RAILWAY COMPANY** )  
**(former Burlington Northern Railroad Company)** )  
 )  
**-and-** )  
 )  
**BROTHERHOOD OF MAINTENANCE** )  
**OF WAY EMPLOYEES DIVISION- IBT** )  
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**STATEMENT OF CLAIM:**

**“We Present the following claim on behalf of Amos Baca, Emp ID 0314351, for the removal of the Claimant's Dismissal for the alleged violation of MWOR 1.6 Conduct, MWSR 1.2.S Safety Rules, Mandates, Instructions, Training Practices, and Policies, and MWSR 1.2.11 Medical Conditions. In addition, we request all record of discipline be removed from the Claimants record. The Claimant shall be made whole as a result of the Carrier's actions.”**

**CARRIER POSITION:**

**In response to the COVID-19 pandemic, BNSF issued its COVID-19 Response and Control Protocol. In short. the protocol requires that upon testing positive for COVID-19, an employee must isolate from the workspace and notify their supervisor. Knowing that he had a positive test result for COVID-19, Claimant came to work on Monday, August 2, 2021, and reported to a small conference room in Belen, NM in order to attend a morning briefing call with five other coworkers. He remained in the room for somewhere between 15 and 30 minutes.**

**Over the preceding weekend, Claimant had been feeling ill and, suspecting he COVID-19, he took a series of at-home tests, one of which showed a positive result. Ignoring BNSF protocol, Claimant decided not to report his positive test and**

reported for work on August 2. As the Carrier sees it, Claimant has admitted to taking these actions. The Carrier concludes that BNSF has met its burden of proof.

#### **ORGANIZATION POSITION:**

With four negative tests, and only one positive test, Claimant was reasonably uncertain whether or not he had Covid-19. It is important to note that he had no symptoms of Covid-19. When he came to work on August 2, Claimant complied with the Company's policies; he wore a mask and social distanced from others. In addition, he complied with the requirement of informing his immediate supervisor of his positive home test as soon as practicable. As the Organization assesses the situation, Claimant did not knowingly put himself or others in danger. He was dismissed despite these facts, an action the Organization deems to be abusive and arbitrary. It concludes supervision has misinterpreted and misapplied the Carrier's rules and policies.

#### **DECISION:**

Claimant in this case took it upon himself to ignore his positive Covid test because he had tested four other times and those tests were negative. The applicable policy does not set forth a variety of standards depending on various combinations of positive and negative test results. It is clear and forthright: if an employee tests positive, (s)he must isolate from the workplace and advise his/her supervisor. There is no equivocation here. It is not for a claimant to doubt the validity of a positive result; that option is not offered, symptoms or not.

After testing positive. Claimant took it upon himself to enter a room where a group of people were meeting. He stayed in the room for 15-20 minutes. This is precisely the type of situation the Carrier seeks to avoid and prohibit with its policy. Though Claimant's frustration at having four negative results and only one positive one is understandable, the question of whether the positive test could be ignored is not a question he was at liberty to decide. It was incumbent upon him to stay away from the workplace and notify his supervisor to gain direction, rather than take matters into his own hands.

#### **AWARD:**

The claim is denied.

**Dated: May 1, 2023**



**Patricia T. Bittel, Neutral Member**



**Jeffery L Fry, Labor Member**



**Logan McKenna, Carrier Member**