

PUBLIC LAW BOARD NO. 5850

Case No. /Award No. 570

Carrier File No.: 14-21-0346

Organization File No.: 2407-SL13C5-2144

Claimant: R. Perschbacher

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

STATEMENT OF CLAIM:

“We present the following claim on behalf of Ryon Perschbacher (1671924) seniority date of 8-6-2005 for the removal of the Claimants Dismissal. In addition, we request all record of discipline removed from the Claimant's record. The claimant shall be made whole as a result of being withheld from service starting August 9, 2021. The Carrier's violation, including the following compensation(s):

- 1. Straight time for each regular workday lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the claimant at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by the claimant while wrongfully removed from service);**
- 2. Any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service, including any and all 401k contributions including any market adjustments;**
- 3. Overtime pay for lost overtime opportunities based on overtime for any position claimant could have held during the time claimant was removed from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had the claimant not been removed from service;**

4. Health, dental and vision care insurance premiums, deductibles, and co-pays that he would not have paid had he not been unjustly Disciplined commencing December 4, 2020, continuing forward and/or otherwise made whole. All notations of the disciplined should be removed from all Carrier records.”

CARRIER POSITION:

Claimant was assessed a Level S Conditional Suspension after being found guilty of violating MWOR 1.5 – Drugs and Alcohol in August 2021. He was issued a conditional suspension which required him to comply with several conditions upon which his reinstatement depended, including compliance with a treatment program. On October 20, 2021, Employee Assistance Program (EAP) Manager R. Whitcomb notified Manager Medical & Employee Health (MEH) J. Murphy that Claimant had “verbalized plan to resign from BNSF as he does not agree with recommendation for treatment.” Continuing attempts by telephone and text to contact Claimant afterwards were unsuccessful.

Based upon this information, an Investigation into Claimant’s alleged noncompliance with his conditional suspension was scheduled for November 4, 2021. After one postponement, the Investigation was held on November 5, 2021. Claimant chose not to attend. His representative presented no evidence regarding the charges during the Investigation. Following a review of the Investigation transcript and exhibits, Conducting Officer Bunch determined Claimant was guilty of the charged violation.

ORGANIZATION POSITION:

The Organization simply stated it was not in agreement with the Carrier’s dismissal decision, and labelled it extreme and unwarranted.

DECISION:

Claimant evidently refused to comply with the conditions of his continued employment after testing positive for alcohol use at work. There was no objection to the fairness of the terms of his continued employment. Hence, there is no issue before us as to whether they were reasonable.

It is un rebutted that Claimant failed to cooperate with either the Carrier or its Medical Department. His noncompliance is apparent. The Board has no basis for overturning this discipline.

AWARD:

The claim is denied.

Dated: May 1, 2023



Patricia T. Bittel, Neutral Member



Jeffery L Fry, Labor Member



Logan McKenna, Carrier Member