

PUBLIC LAW BOARD NO. 5850

Case No. /Award No. 571
Carrier File No.: 14-21-0347
Organization File No.: 2407-SL1312-2110
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 Level S Conditional Suspension. 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:

On August 9, 2021, Claimant was informed he had been selected for an FRA random drug test. Claimant’s supervisor, C. Holsteen, was notified immediately that during the breath portion of the test, Claimant tested positive for alcohol.

As a result, Claimant was withheld from service and on September 28, 2021, an Investigation was held. Claimant did not appear at the investigation. Neither Claimant nor his representative disputed the validity of the test results, nor did either deny violation of the above rule at the Investigation. Considering the serious nature of the violation, combined with the fact that this was Claimant’s first violation of MWOR 1.58, the Carrier argues the conditional discipline was compassionate and provided Claimant a genuine “second chance”.

ORGANIZATION POSITION:

The Organization takes the position that it does not agree with the Carrier’s disciplinary action in this case, and deems it extreme and unwarranted.

DECISION:

The Board has no basis in the record for overturning the Carrier’s finding that Claimant violated the Company policy on drugs and alcohol. The validity of the test results has not been called into question. Likewise, the Board perceives no unfairness in allowing Claimant to continue his employment under a Level S Conditional Suspension which gives him an opportunity to rehabilitate. The Carrier’s industry is a dangerous one, and it is reasonable for it to enforce its rules and policies regarding substance abuse.

AWARD:

The claim is denied.

Dated: May 1, 2023



Patricia T. Bittel, Neutral Member



Jeffery L Fry, Labor Member



Logan McKenna, Carrier Member