

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 215, (Case No.215)**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

**VS**

**BNSF RAILWAY COMPANY**

William R. Miller, Chairman & Neutral Member  
Samantha Rogers, Carrier Member  
David R. Scoville, Employee Member

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- 1. The Carrier violated the Agreement commencing August 15, 2016, when Claimant, Jeffery Thompson (0316125) was dismissed for his second positive test on a drug test while working as a truck driver within a 10 year period. The Carrier alleged violation of the BNSF’s Policy on the use of Alcohol and Drugs.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall reinstate Claimant, remove from the Claimant’s record this discipline with all rights unimpaired and pay for all wage loss including overtime commencing August 15, 2016, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”  
(Carrier File No. 14-16-0392) (Organization File No. 2418-SL1312-1610)**

**FINDINGS:**

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

The facts indicate that on February 9, 2015, Claimant tested positive for drugs. Claimant’s Employee Transcript showed the aforementioned incident to be a first time violation of Rule 1.5.

On April 9, 2015, Claimant was advised he had satisfactorily completed the necessary requirements following his positive test. On April 13<sup>th</sup> Claimant signed and acknowledged in the Conditional Suspension Waiver for return to duty that he had read and understood the conditions and was subject to dismissal if he violated any one or more of the following conditions:

**“Violation of any one or more of the following conditions will subject you to dismissal:**

- \* More than one confirmed positive test for any controlled substance or alcohol, obtained under any circumstances during any 10-year period.”**

Subsequently, Claimant was administered a Follow-Up Test on August 1, 2016, and Claimant tested positive for Methamphetamine. Because of that test the Claimant was terminated by the Carrier on August 15, 2016.

It is the position of the Organization that the Carrier violated Rule 13 and Appendix 11 of the Agreement when Claimant was not afforded a formal Investigation before being dismissed. It further argued that if the Carrier had proven its allegations, which it did not, the discipline was excessive. It concluded by requesting that the discipline be rescinded and the claim be sustained as presented.

It is the Carrier’s position that the dismissal of Claimant was neither “extreme” nor an “abuse of discretion” as the Organization asserted. It argued that it acted in accordance with various Rules and Policies in effect for a second positive test within a 10-year period. It closed by asking that the discipline not be disturbed and the claim remain denied.

Review of the record reveals that the Organization asserted the Claimant was entitled to a formal Investigation before discipline could be exercised by the Carrier. In Appendix 11- Handling Certain Disciplinary Matters, there are three Letters of Understanding addressing the handling of positive drug/alcohol test(s) dated April 1, 1990, June 24, 1991 and December 29, 2003. The aforementioned letters have a common thread, that being if an employee is returned to service with a Conditional Suspension Waiver and they again test positive for a substance prohibited by Carrier Rules they will be subject to dismissal without the protective benefits of Rule 13 and Appendix 11.

In Award No. 185 of this Board the following was stated:

**“On the property there is extensive arbitral precedent that stands for the proposition that dismissal without benefits of a formal Investigation for employees who tested positive for a second drug and/or alcohol test within a ten year period after being**

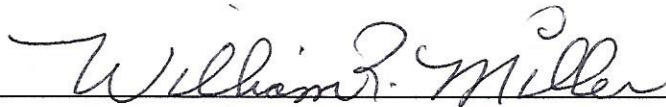
returned to service on a Conditional Suspension Waiver was appropriate (See Public Law Board No. 4244, Award Nos. 118, 119, 121, 125, 126, 174, 175, 178, 183, 254, 306, 322, 329 and 348 and Public Law Board No. 5850, Award Nos. 51, 73, 105, 113, 129, 152, 180, 242 and 345.”

It is clear that the Claimant violated the Carrier’s Policy on the Use of Alcohol and Drugs by the positive test results for the Follow-Up Test conducted on August 1, 2016, and that was the Claimant’s second violation of that policy in a ten year period. Additionally, the record substantiated that the Carrier was not required to provide the Claimant a formal Investigation. The Carrier met its burden of proof that the Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had approximately two years of service with two prior disciplinary assessments on his record one of which was a Serious Level Suspension and the instant offense was a dismissible offense in accordance with the Conditional Suspension Waiver that the Claimant signed. The Board finds and holds that the discipline will not be disturbed and the claim will remain denied because it was not contrary to the Carrier’s Policy for Employee Performance Accountability (PEPA), nor was it arbitrary, excessive or capricious.

**AWARD**

Claim denied.



William R. Miller, Chairman and Neutral Member



Samantha Rogers, Carrier Member



David R. Scoville, Employee Member

Award Date: 1/5/18