

**Case No. 391**  
**Award No. 391**  
**BNSF File No. 14-22-0064**  
**BMWED File No. 2417-SL13I3-2201**

**Public Law Board No. 7048**

**PARTIES**     ) **Brotherhood of Maintenance of Way Employes Division**  
                  ) **ATSFF System Federation**  
**TO**             )  
                  ) **and**  
**DISPUTE:**    )  
                  )  
                  ) **BNSF Railway Company**

**Claimant: Dyson Benally ID# 0267260**

**Members of the Board:**

**Jeanne M. Vonhof, Chairman and Neutral Member**  
**Michelle McBride, Carrier Member**  
**Jeffery Fry, Employee Member**

**Statement of Claim**

“We Present the following claim on behalf of Dyson Benally, Emp ID 0267260, for the removal of the Claimant’s Level S 30 Day Record Suspension and Three (3) Year Review Period, for Violation of MWOR 1.13 Reporting and Complying with Instructions. We request all record of discipline be removed from the Claimant’s record. The Claimant shall be made whole as a result of the Carrier’s actions.”

**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 Board shall not have jurisdiction of disputes growing out of requests for changes in rates of pay, rules, or working conditions, nor have authority to change existing agreements or to establish new rules. The Board shall have jurisdiction over the disputes assigned to this Board and such other disputes as may be added during the life of the Board by mutual assent of the parties.

After an investigation held on Friday, February 4, 2022, the Claimant was notified via letter dated March 3, 2022, that he was being assessed a Level S 30 Day Record Suspension for his failure to comply with instructions outlined per the Medical and Employee Health's Employee Assistance Program on January 20, 2021. The notice stated that the Claimant had failed to comply with instructions and/or recommendations provided to him by BNSF's Employee Assistance Program and that he failed to maintain contact with the Employee Assistance Program. In addition, he was assessed a Three (3) Year Review Period that commenced on March 3, 2022, and informed that any rules violation during this review period could result in further disciplinary action. The notice stated that the Claimant's actions were in violation of MWOR 1.13, Reporting and Complying with Instructions.

The Claimant (Dyson Bennaly) was working as a Trackman on the California Subdivision at the time and had worked for the Carrier since 2014. He violated the Employer's Use of Alcohol and Drugs Policy when he tested positive on an alcohol screen on July 1, 2021. The Claimant was removed from service at the time and referred to the Employee Assistance Program under the Employer's EAP and Return to Service Corporate Rule. The Rule requires the Claimant to meet with a Drug and Alcohol Counselor (DAC) for evaluation. After such evaluation, the Claimant was required to participate in any education or treatment programs recommended by the DAC.

Ms. Julie Murphy, Manager of Medical and Employee Health Services on the Drug and Alcohol Compliance Team, testified that she received a letter from Mr. Patrick Gallegos, Employee Assistance Manager (EAM), dated January 20, 2022, detailing the dates that the Claimant had had contact with the EAP. Gallegos states that the Substance Abuse Professional (SAP) assigned to the Claimant stated that the Claimant had dropped out of treatment by November 19, 2021. Gallegos stated in the letter that he had tried to reach Claimant by telephone and finally by email on January 10, 2022, at his last known email address, giving him five (5) days to respond. Gallegos' letter stated that the Claimant had viewed the email on January 11, 2022, but had not yet responded.

The Carrier's policy states that "failure to complete treatment or education programs may subject the employee to discipline, including dismissal." The Carrier argues that there is substantial evidence on the record that the Claimant failed to complete the treatment and education program recommended by the Substance Abuse Professional (SAP) and failed to even stay in touch with the SAP. Therefore, the Carrier argues that discipline is appropriate, under MWOR Rule 1.13, which states,

“Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.”


The Organization asserts that the Claimant was not properly notified of the investigation. According to the Organization, the Claimant lives on the Navajo Indian reservation, and uses a P.O. Box. However, the record contains a notice to the Claimant, with a certified mail number, and the Organization did not show that the Carrier sent the notice to any address other than the address the Claimant had provided to the Carrier. On these grounds there is not substantial evidence that the Carrier failed to provide adequate notice of the hearing.

The Organization also argues that Ms. Murphy never spoke to the Claimant and therefore, cannot testify about what education or treatment he was instructed to undergo and whether he met or failed to meet those requirements. However, the Carrier presented convincing evidence from the Employee Assistance Program that the Claimant was assessed under the EAP; began treatment; and then stopped treatment and stopped communicating with the EAP. Under these circumstances, the Board concludes that the record provides substantial evidence that the Claimant violated MWOR Rule 1.13 Reporting and Complying with Instructions.

Testing positive for alcohol through one of the Employer’s screens is a very serious matter. In order to keep his job, the employee must comply with the Carrier’s Return to Service rules and cooperate with any treatment or education program required under the EAP. In this case the evidence establishes that the Claimant failed to do so. Under these circumstances, the Board cannot conclude that a 30 Day Record Suspension and a Three-Year Review period are excessive.

## AWARD

Claim denied.

Signature 

Jeanne M. Vonhof  
Neutral Member and Chairperson



Michelle D. McBride  
Carrier Member



Jeffery Fry  
Employee Member

Dated: August 28, 2024