

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 265

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2022-00019

Claimant: J. Dial

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The dismissal imposed upon Mr. J. Dial for alleged violation of USOR General Rule G - Drugs and Alcohol and CN SAFE Policy was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2022-00019 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Dial's personal record shall be cleared of the charges immediately and he shall be provided the remedy prescribed in Rule 31 of the Agreement. Additionally, the Claimant shall have his seniority restored, his accredited months of service and all benefits that were not received during his time out of service.”

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7566 has jurisdiction over the parties and the dispute involved herein.

Claimant was working at the Carrier facility in Duluth on March 9, 2022. Claimant was subject to a random FRA/DOT drug and alcohol screening. Carrier was later notified Claimant had tested positive for the prohibited substance of alcohol. Claimant was removed from service, provided the results, and offered assistance through the Employee and Family Assistance Program (EFAP).

Claimant was notified by letter dated March 10, 2022:

The investigation is being held to develop the facts and to determine your responsibility, if any, in connection with an incident that occurred at approximately 1500 hours, March 9, 2022 at or near Duluth, MN, in which you allegedly tested positive for alcohol following a FRA random test, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

Following a postponement, the investigation occurred on March 22, 2022. Claimant was sent a letter on April 19, 2022, advising that he was in violation of USOR Rule G – Drugs and Alcohol and Carrier’s Substance and Alcohol Free Environment (SAFE) Policy. Claimant was dismissed from service.

The Carrier maintains not only that the evidence is straightforward – Claimant failed a random test and tested positive for alcohol, but also that the defenses should be rejected. Carrier maintains that the completion of EAP is commendable but does not erase the positive test. The Carrier also argues that the Minnesota law cited by the Organization is inapplicable due to federal pre-emption in the FRA.

The Organization maintains that the Carrier should not have terminated Claimant following his first positive test. He successfully completed EAP and should be reinstated. Minnesota law also addresses situations like this and should govern the Carrier’s actions.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier’s judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier’s actions were an abuse of discretion.

The Carrier has established that Claimant tested positive for alcohol following a random test. The Union cites a Minnesota law in support, but that law is pre-empted by the FRA regulations and does not apply to this matter. The Organization has established that Grievant has no prior substance abuse and it appears he has successfully completed EAP. Given the circumstances of this particular case, the Board finds it appropriate to

return Claimant to his position with no back pay and subject to verification of his completed EAP program including any required follow-up evaluations and/or treatment (or successful completion in the absence of such verification), and his acceptance and clearance for service under the EAP processes outlined in the Carrier's policy.

Claimant granted in part and denied in part. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



Adam Gilmour
Organization Member



Steven Napierkowski
Carrier Member



Brian Clauss
Neutral Member

Dated: December 18, 2024