

PUBLIC LAW BOARD NO. 7585

**Case No. /Award No. 101
Carrier File No.: 10-19-0294
Organization File No.: C-19-D070-9
Claimant: L. Mendoza**

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

STATEMENT OF CLAIM:

The Organization objects to BNSF's decision to dismiss Claimant for his second positive drug and alcohol test occurring on May 8, 2019 in violation of Maintenance of Way Operating Rule (MWOR) 1.5 and BNSF's Policy on the Use of Alcohol and Drugs effective September 1, 2014.

CARRIER POSITION:

On October 10, 2018, Claimant Mendoza tested positive for Alcohol and was issued a conditional suspension with a one-year review period. On May 8, 2019 he was given a follow up test. At 0742, an hour and 42 minutes after his shift start, he tested at .083% for alcohol. Sixteen minutes later he tested at .087%. He was deemed to be in violation of the Company Policy on Drugs and Alcohol and dismissed.

The Carrier refutes any argument that his positive test could be attributable to use of mouthwash in several respects. First, Claimant was an hour and 42 minutes into his shift at the time of the test. It references research showing that the impact of mouthwash use on alcohol testing quickly dissipates in just a few minutes, hence no impact from using mouthwash before his shift is feasible. In addition, it notes that a second test 16 minutes later verified alcohol use after any possible effect from using mouthwash.

ORGANIZATION POSITION:

The Organization argues that Claimant used mouthwash before coming on shift, and maintains this accounts for the positive test.

In addition, it submits a letter from Licensed Independent Mental Health Practitioner Michael Leach that Claimant is very cooperative in his sessions and would be “a good risk for any course of action that would allow him to continue working.” In its assessment, this letter should constitute a powerful mitigating circumstance, warranting reinstatement.

DECISION:

We are not persuaded that mouthwash could account for Claimant’s positive alcohol test on May 8, 2019. The Carrier presented evidence that mouthwash dissipates after only a few minutes. Claimant’s test was almost two hours into his shift. Furthermore, the test was repeated after 16 minutes with comparable results. The Carrier has no reasonable basis on which to doubt the validity of the test.

The test constitutes substantial evidence the Claimant violated the Carrier’s Policy regarding alcohol use. Though the record supports the capacity of Claimant to improve and comply, this is a repeat violation. Claimant has already had the opportunity to learn from his mistakes. The Carrier is not unreasonable in enforcing its policy.

AWARD:

The claim is denied.

Dated: November 25, 2020



Patricia T. Bittel, Neutral Member

Zachary C. Voegel

Zachary Voegel, Labor Member



Samantha Rogers, Carrier Member