

PUBLIC LAW BOARD NO. 7585

**Case No. 34/Award No. 34
Carrier File No.: 10-13-0570
Organization File No.: C-13-D070-16
Claimant: M. D. Shannon**

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

FACTS:

On August 13, 2013, the Carrier dismissed Claimant for violation of its Policy on the Use of Alcohol and Drugs. The Organization challenges this decision and seeks reversal and reinstatement.

CARRIER POSITION:

Roadmaster J. Wegner testified that on July 3, 2013, Claimant was selected for random CDL testing for drug and alcohol use; Wegner subsequently received a report that Claimant failed the test. He said his supervisor, M. Boyer, instructed him to withhold Claimant from service. The notice stated Claimant tested positive for a controlled substance, and that this was the second time, Claimant having tested positive for alcohol on May 23, 2006.

Manager of Medical Support Services M. Crespino testified that his office generated a random test for Claimant on July 3, after which the non-employee Medical Review Officer reported a positive test for marijuana. Documentation of the testing confirmed retention of chain of custody for both split samples. Claimant requested retesting, which was performed, confirming the presence of marijuana.

Asked during the investigation whether he violated BNSF Policy on Use of Alcohol and Drugs by testing positive for marijuana, Claimant responded "Apparently so." Asked if he had any measurable amounts of over-the-counter prescriptions, narcotics or controlled substance while on duty on Carrier property in violation of MOWOR 1.5, Claimant responded "Apparently I did."

ORGANIZATION POSITION:

Claimant Shannon was Section Foreman at the time of the testing. He stated that on June 28 and 29, he went to a class reunion, drank "fairly heavy" and does not remember anything after 11 pm. "I don't know whether I smoked something or ate a brownie or sucked on a lollipop or whatever."

Claimant has been with the railroad for 38 years and has never tested positive for marijuana. He asserted his problem is with alcohol, not marijuana, and he is actively participating in AA. He said his recommendation was to attend two meetings a week but has been going to four or five.

DECISION:

There is no denial that Claimant came to work with marijuana in his system. There is no controversy about the accuracy of the drug testing results. Hence, the record establishes that Claimant was in violation of BNSF Policies regarding use of Alcohol and Drugs. This was not his first time; his prior failure of drug and alcohol testing showed use of alcohol.


This Claimant has fully 38 years of service with the railroad. Both he and the Organization argue that this long service should be taken into consideration as a mitigating circumstance adequate to salvage Claimant's job. In ordinary circumstances, such long service would weigh heavily towards mitigation.

In the Board's assessment, however, service must be not only long, but also commendable in order to establish mitigation. In this case, Claimant had previously violated the exact same Policy. The fact that the prior instance involved alcohol while the instant matter pertains to use of marijuana in no way lessens the fact that Claimant has already been given a second chance in regards to a very serious matter. It follows that the Carrier has substantial evidence to support its dismissal decision.

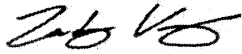
AWARD:

The claim is denied.

September 2, 2015



Patricia T. Bittel, Neutral Member

A handwritten signature in black ink, appearing to read 'Zach Voegel'.

Zachary Voegel, Labor Member

A handwritten signature in black ink, appearing to read 'Donald J. Merrell'.

D. J. Merrell, Carrier Member