

<b>PARTIES</b>	)	<b>UNION PACIFIC RAILROAD COMPANY</b>
	)	
<b>TO</b>	)	<b>VS.</b>
	)	
<b>DISPUTE</b>	)	<b>BROTHERHOOD OF MAINTENANCE</b>
	)	<b>OF WAYEMPLOYES DIVISION -IBT</b>
	)	<b>RAIL CONFERENCE</b>

**Public Law Board consisted of the regular members and, in addition, Referee Meeta A. Bass when this Award was rendered.**

**STATEMENT OF CLAIM:**

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

- 1. The Carrier’s discipline (dismissal) imposed upon Mr. M. Staats, by letter dated August 6, 2021, in connection with allegations that he failed to comply with Rule 1.5: Drugs and Alcohol was excessive, arbitrary, disparate; imposed without due process; without the Carrier having met its burden of proof; and in violation of the Agreement (System File A-2148U-004/1761950 UPS).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant M. Staats shall now be returned to service and ‘... Claimant now be made whole by compensating him for all wage and benefit loss suffered by him for his employment termination, any and all expenses incurred or lost as a result, and the alleged charge(s) be expunged from his personal record. Claimant must also be made whole for any and all loss of Railroad Retirement month credit and any other loss.’ (Employees’ Exhibit ‘A-2’).”**

**FINDINGS:**

**The Board, upon the whole record and all the evidence, finds that:**

**The Carrier or Carriers and the Employee or Employees involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway**

**Labor Act, as approved on June 21, 1934. The Board has jurisdiction over the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.**

**The Carrier hired the Claimant on June 26, 2011. On July 6, 2021, the Claimant worked as a Section Gang Foreman. During a follow-up DOT drug and alcohol test, the Claimant registered a positive result in a Breath Alcohol Test (BAT) reading of .020, then again registering .025 approximately fifteen (15) minutes later. Following the positive test, the Claimant was removed from service and sent a Notification of Investigation dated July 9, 2021. This incident was the Claimant's second positive alcohol test in two years; the Claimant was still within the 10-year period in which he had agreed not to violate the Carrier's drug and alcohol policy.**

**The Carrier issued a Notice of Investigation letter dated July 9, 2021, stating: "...to develop the facts and determine your responsibility, if any, in connection with the below charged. "On 07/06/2021, while employed as a Section Foreman, the UP Follow-Up test administered to you returned a positive result for a prohibited substance (Alcohol level 0.025 BAC). The test was triggered pursuant to Union Pacific Railroad (UPRR) Drug and Alcohol Policy at 2004 14th Ave, Council Bluffs, IA. This is a possible violation of the following rule(s) and/or policy: 1.5: Drugs and Alcohol ..."**

**Following a postponement, the investigation hearing occurred on July 26, 2021. Following the investigation hearing, the Claimant received a discipline notice dated August 6, 2021, finding a violation of Rule 1.5 Drugs and Alcohol. The Carrier dismissed the Claimant. The Organization filed a claim by letter dated August 10, 2021, and the Carrier denied the same on September 16, 2021. The Organization filed the appeal by letter dated September 21, 2021, and the Carrier denied the same by letter dated November 12, 2021. The parties held a formal conference with no resolution of the claim on December 13, 2022. The Organization submitted a post-conference letter on December 13, 2021, requesting the Carrier re-evaluate their position or the matter would be progressed to the National Railroad Adjustment Board. There was no change in the Carrier's position. This matter is before this Board for a final resolution of the claim.**

**The Board reviewed the record developed by the parties during their handling of the claim on the property and considered evidence related to the following to make its determination of this claim:**

- 1) Did the Claimant receive a full and fair investigation with due notice of charges, opportunity to defend, and representation?**
- 2) If so, did the Carrier establish by substantial evidence that the Claimant was culpable of the charged misconduct or dereliction of duty?**
- 3) If so, was the penalty imposed arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case?**

**Rule 1.5—Drugs and Alcohol and Union Pacific Drug and Alcohol Policy are hereby incorporated as if fully rewritten into this Award.**

**The Carrier contends the evidence presented at the investigation showed the Claimant had a Breath Alcohol Test (BAT) during the initial screening of .020. Following the required fifteen (15)-minute break, the confirmation test showed that the Claimant had a BAT of .025 in violation of Rule 1.5. Further, the Claimant tested positive for alcohol on September 5, 2019, during a random test and was participating in the Employee Assistant Program (EAP), which allowed him to return to service. The Carrier argues the seriousness of the Claimant's violation fully supports the discipline imposed. The Carrier asserts the Claimant was afforded all the due process rights required under the Collective Bargaining Agreement, and there were no prejudicial procedural defects.**

**The Organization contends that the Carrier deprived the Claimant of his right to a fair and unbiased hearing process and asserts the hearing officer neglected to establish any factual findings or credibility assessments, nor did they play a role in determining the final penalty imposed. The Organization asserts the Carrier failed to prove a violation of Rule 1.5. The Organization argues the Claimant's initial test of .020 fell within the margin of error and, therefore, must be minimally reduced to .018. The Claimant's secondary test unexplainably went up to .025 during the fifteen (15) minute wait between tests and, regardless, must be reduced to .023. The Organization claims for the Claimant to be considered under the**

**influence, he must have a confirmed breath or blood alcohol level of .02 or higher. Thus, the Carrier failed to meet its burden of proof.**

**Upon thoroughly examining the evidence and arguments presented, this Board has concluded that no significant procedural errors are evident in the record. The Claimant was duly provided with the opportunity to furnish evidence, call witnesses, and cross-examine Carrier witnesses.**

**The Claimant had a positive alcohol test result on September 5, 2019, during a random screening. At that time, the Claimant was offered the opportunity to participate in the Employee Assistant Program (EAP) and return to service, which he accepted. According to the Carrier's Drug and Alcohol Policy 21.0: One Time Return to Service and Ten-Year Policy, an employee who has been granted a one-time return to service and subsequently violates the Union Pacific Drug and Alcohol Policy again within ten years will face permanent dismissal.**

**The evidence on record substantiates on July 6, 2021, the Claimant tested .020. As per regulations, a secondary test was conducted after a stipulated waiting period, indicating a BAC level of .025 percent. According to the Carrier's drug and alcohol policy, no employee may report for duty or remain on duty with a BAC percentage exceeding .020. The test administrator affirmed the accuracy and calibration of the testing device in consideration of the variance. Consequently, this Board finds the Claimant breached the Carrier's Drug and Alcohol Policy and General Code of Operating Rule (GCOR) 1.5 for the second time. Considering the circumstances and the Grievant's prior record, the imposed penalty is deemed reasonable, non-arbitrary, non-capricious, and not an abuse of discretion.**

#### **Award**

**Claim denied.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant not be made.**

\_\_\_\_\_/s/ *Meeta A. Bass*\_\_\_\_\_

**Meeta A. Bass**  
**Chairman and Neutral Member**

*Jennifer McNeil*\_\_\_\_\_  
**Jennifer McNeil,**  
**Carrier Member**  
**Dated: April 17, 2024**

*John Schlismann*\_\_\_\_\_  
**John Schlismann,**  
**Organization Member**  
**Dated: April 17, 2024**