

**PARTIES** ) **UNION PACIFIC RAILROAD COMPANY**  
)  
**TO** ) **VS.**  
)  
**DISPUTE** ) **BROTHERHOOD OF MAINTENANCE**  
) **OF WAYEMPLOYES DIVISION -IBT**  
) **RAIL CONFERENCE**

**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 decision (dismissal) imposed upon Mr. H. Romine, by letter dated February 19, 2021, in connection with the hearing held pursuant with 49 CFR 219.104 was procedurally flawed; issued without the Carrier having met its burden of proof; and was harsh, excessive and an abuse of managerial discretion (System File M-2148U-502/1754971 UPS).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant H. Romine 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, 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 all loss of Railroad Retirement month credit and any other loss.**

**In short, we herein make the demand that the Claimant be made “whole” for any and all losses related to his dismissal from service.’ (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 August 8, 2005. The Claimant failed a breath alcohol test on August 3, 2020, signed a conditional reinstatement to service, and was admitted into the Carrier's Employee Assistance Program (EAP). In his signed waiver agreement, the Claimant accepted that failure to comply with the provisions of the 12-month probationary period would result in his immediate return to dismissed status without the benefit of a formal hearing under the Collective Bargaining Agreement. On January 18, 2021, the Claimant participated in a Department of Transportation (DOT) Drug and Alcohol test according to the August 4, 2020 Waiver Agreement terms. Following two (2) Blood Alcohol Content (BAC) readings of .054 and .044, respectfully, the Claimant was removed from service and subsequently dismissed per a letter dated January 22, 2021.**

**On February 1, 2021, the Claimant denied the validity of the non-negative alcohol test and requested a post-suspension hearing under the provisions of 49 CFR 219.104 on the evidence of Positive Test results. By letter dated February 5, 2021, the Claimant was notified of his hearing telephonically on February 10, 2021, due to the pandemic. During the hearing, the Claimant challenged the test result for several reasons. The Claimant outlines discrepancies in the drug testing procedure, noting deviations from the usual protocol observed throughout his career. By letter dated February 19, 2021, a Carrier representative other than the hearing officer found the evidence provided at the Claimant's hearing more than substantially supported the validity of the test results identified in the Notice of Dismissal dated January 22, 2021. The Carrier determined the Claimant would remain dismissed.**

**The Organization filed a claim by letter dated March 24, 2021, and the Carrier denied the same on May 17, 2021. The Organization advanced the appeal by letter dated June 16, 2021, and the Carrier denied the same by letter dated September 14, 2021. A formal conference was held with no resolution of the claim on January 31, 2022. The Organization submitted a post-conference letter on September 12, 2022, requesting the Carrier re-evaluate their position or the matter would be advanced**

to the National Railroad Adjustment Board. The Carrier's position stayed the same. This matter is before this Board for a final resolution of the claim.

The Carrier contends the record established management followed the FRA (DOT) approved testing procedures. The Carrier also asserts the record established no deficiencies that the FRA (DOT) considers as reasons to warrant the canceling of a test. According to the Carrier, no reason exists to cancel the test, and the results must stand. The Carrier pointed to the transcript, wherein the Carrier communicated a willingness to contact the testing agent, but the Organization declined, waiving its right to cross-examine. The Carrier argues the Claimant was unable to carry his burden of proof. According to the Waiver provision, the Claimant agreed that violating the Carrier's drug and alcohol policy within the 12-month probationary period would result in immediate dismissal without the benefit of a formal disciplinary hearing. As such, the Claimant's positive test for breath alcohol on January 18, 2021, was just cause for the Claimant to be reverted to a dismissed status.

The Organization contends the Carrier dismissed the Claimant without following required procedural safeguards during the drug testing process, failed to meet its burden of proof that the test of January 18, 2021, was valid, and failed to issue a decision as explicitly required by § 219.104 (c)(1). Due to the Carrier's failure to follow procedural safeguards concerning drug and alcohol testing and its failure to issue a decision as required by § 219.104 (c)(1), the Organization argues the Claimant must be returned to service and compensated for all lost time. The Organization opines that the Claimant's challenges to the validity of the test must stand and argues the dismissal is unduly harsh, excessive, and an abuse of the Carrier's managerial discretion.

Upon thorough review of the arguments presented and the case record, this Board concludes that Carrier has adhered to the regulations governing the administration of drug and alcohol tests. The Claimant failed to demonstrate any federal grounds that warrant the cancellation of the positive test results. While this Board acknowledges the Carrier's non-compliance with the federal regulation mandating the issuance of the decision by the presiding officer, the transcript presented convincingly establishes the accuracy of the test results. By the terms outlined in the Claimant's reinstatement Agreement and the negotiated penalty for a positive test

during the probationary period, dismissal is the prescribed consequence. Therefore, this Board affirms the Carrier's decision to dismiss the Claimant from service.

**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**  
**Neutral Chairperson**

*Jennifer McNeil*  
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**Jennifer McNeil**  
**Carrier Member**  
**Dated:** April 29, 2024

*John Schlismann*  
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**John Schlismann**  
**Organization Member**  
**Dated:** April 29, 2024