

PUBLIC LAW BOARD NO. 7254

**PARTIES) UNITED TRANSPORTATION UNION
TO)
DISPUTE) BNSF RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim and appeal in behalf of Spokane, WA Brakeman M. S. Smith for immediate return to service, pay for all time lost, including attending investigation, and complete record clearance, account dismissed on February 14, 2008, for alleged violation of GCOR Rule 1.5 (alleged second time violation when tested positive for the presence of a controlled substance determined to be alcohol positive on follow up drug and alcohol test conducted at Spokane, WA on December 21, 2007). (UTU File: DISP SMITH 12/21/07; Carrier File: 53-08-0009)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

On December 21, 2007, while subject to a follow-up drug and alcohol test account a prior violation of Rule 1.5 of the General Code of Operating Rules, Claimant was found to be in further violation of such rule when breathalyzer testing revealed Claimant to have a breath alcohol content level of .125. A confirmation test also registered a content level of .125.

In part here pertinent, GCOR Rule 1.5 proscribes: "Employee must not have any measurable alcohol in their breath or in their bodily fluids when reporting for duty, while on duty, or while on company property."

That Claimant would offer that after failing to pass the breathalyzer tests conducted on December 21, 2007 he recognized that he had to do something about a problem with alcohol abuse, and went to the North Idaho Behavioral Health Chemical Dependency Unit, and entered there on December 31, 2007 for two weeks, is not viewed as reason to conclude that Claimant has overcome a personal problem with alcohol dependency, much less that this constitutes reason for his reinstatement to service.

As concerns procedural argument advanced by the Organization, the Board finds such argument to be either without merit or not of sufficient basis to hold that Claimant had been denied benefit of a fair and impartial hearing.

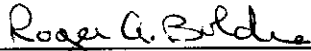
It being evident that Claimant was guilty of a second violation of Rule 1.5 within ten years of a leniency reinstatement for a prior violation of such rule, and it being evident that it has been a consistent Carrier policy to terminate employees under such circumstances, the Board has no basis to conclude that Claimant's dismissal from service was arbitrary, harsh or excessive. The claim to return Claimant to service and pay him for time lost will, therefore, be denied.

AWARD:

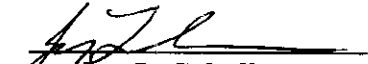
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Roger A. Boldra
Carrier Member


Jay L. Schollmeyer
Organization Member

Fort Worth, TX

Dated: 11-17-09