

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43039  
Docket No. MW-43885  
18-3-NRAB-00003-160694**

**The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(Kansas City Southern Railway Company**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (dismissal) imposed upon Mr. N. Gilmore by letter dated September 21, 2015 for alleged violation of The Kansas City Southern Railway Company’s General Code of Operating Rules 1.5 - Drugs and Alcohol as amended was without just and sufficient cause, arbitrary, unwarranted and in violation of the Agreement (System File KCS701SN15D/K0415-6524 KCS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant N. Gilmore shall have all charges dropped and references to this incidence stricken from his record and he must be returned to service with all rights unimpaired and compensated for any lost time or expense incurred as a result of the Carrier’s improper discipline.”**

**FINDINGS:**

**The Third Division of the Adjustment 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 June 21, 1934.**

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

After the Investigation held September 16, 2015 and by letter dated September 21, 2015, the Claimant – an employee in the Carrier’s service for 13 years – was dismissed for violating the Carrier’s Drug and Alcohol policies.

At the time this dispute arose, the Claimant was assigned as a Machine Operator on a road gang. The Claimant was directed to submit to a reasonable cause drug test administered on August 26, 2015 as a result of equipment damage that occurred at MP 264.1 at Pleasant Hill, IL while he traveled on a Tripp Tie Inserter (MW1998W). The test result came back positive for cocaine metabolites. The Carrier asserts that the reason for the test was that the Claimant was not operating equipment in an safe manner which resulted in damage.

When asked at the Investigation if he disputed any of the testimony of the Carrier’s witnesses establishing his submitting to the test and test results, the Claimant stated “Exception? No sir.” Tr. 23. Further, in his closing statement, the Claimant effectively admitted that he committed the charged misconduct. Tr. 25 (“... [T]his is the first time my offense of being drug charged with anything ... I’m very sorry and I apologize for the stuff that happened ....”).

Under these facts, the Claimant’s positive test result for cocaine is substantial evidence supporting the Carrier’s position that the Claimant violated Rule 1.5 (Drugs and Alcohol) (“Employees must not have any prohibited substances in their bodily fluids when reporting for duty, while on duty, or while on company property.”). Investigation Exhibit 6. Under the circumstances of this case, dismissal was not arbitrary.

### **AWARD**

**Claim denied.**

**Form 1  
Page 3**

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**ORDER**

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

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 2nd day of May 2018.**