

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 120
)	
and)	
)	Award No. 120
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
NORFOLK & WESTERN RAILWAY COMPANY))	

Richard K. Hanft, Chairman and Neutral Member
Scott M. Goodspeed, Carrier Member
Zachary J. Wood, Organization Member

STATEMENT OF THE CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. E. Thompson, by letter dated July 16, 2020, in connection with his alleged failure to comply with the Carrier’s policy on Alcohol and Drugs and the instructions of Chief Medical Director F. Litow, MD, MPH, in her letter dated July 1, 2019, in that he tested positive for prohibited substances in a follow-up drug screen conducted on May 27, 2020 was capricious, excessive, harsh and unwarranted (Carrier’s File MW-BLUE-20-86-SG-552 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant E. Thompson shall now be reinstated and be cleared of the unsubstantial charges, with all rights and back pay.”

FINDINGS:

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

After thoroughly reviewing and considering the record and the parties’ presentations, the Board finds that the claim should be disposed of as follows:

Claimant in this matter, it is undisputed, had previously been found guilty of a drug or alcohol related offense. After return to service following that offense, Claimant was sent a letter from Chief Medical Officer Litow instructing him to keep his system free from prohibited substances, informed him that he would be subjected to random follow-up testing for a period of five (5) years and notified Claimant that failure to comply with these instructions would result in dismissal.

On May 27, 2020 Claimant tested positive for a prohibited substance in his system thereby failing to follow the instructions of Chief Medical Director Litow.

At the investigation Claimant acknowledged that he understood the purpose of Chief Medical Director Litow's letter and his responsibility to keep his system free from prohibited substances in order to maintain his employment.

On July 6, 2020, a formal investigation convened. On July 16, 2020 Claimant was notified that he was found guilty of the charges and immediately dismissed from service.

The Organization appealed the Claimant's dismissal complaining that the Carrier violated the procedural elements of Rule 30 of the Agreement, failed to meet its burden of proof and that the discipline of dismissal imposed was excessive and unwarranted.


The Organization takes umbrage over the Hearing Officer's choice of the words at the outset of the investigation stating that the investigation would be "orderly and fair" rather than "fair and impartial" as stated in the parties' agreement. The Board finds that this argument is of no consequence, but rather that the readers of the transcript can come to their own conclusion whether the investigation was conducted in a "fair and impartial" manner as required by the parties' Agreement.

Moreover, the Organization complains that the Carrier failed to follow federal guidelines concerning the number of nanograms registering on the drug screen and the federal cut off level. The problem for the Organization's argument is that Claimant was brought back to work after his first positive test on the condition that he keep his system free from prohibited substances. Although the amount of prohibited substance detected by the follow up test is below the Federal cut off point, Claimant still had a prohibited substance in his system and the condition of his return to work after his first failed test was that he would keep his system free from prohibited substances. This follow up test proved he did not.

Finally, the Organization asserts that the quantum of discipline in this matter was inappropriate and improper. Claimant here was returned to work after his first failed drug test on the explicit directions of the Chief Medical Director to keep his system free from prohibited substances. Claimant testified that he understood the letter and his responsibility. Claimant in this instance failed to keep his system free from prohibited substances and knew and agreed to the consequences of failure to follow the instructions of the Chief Medical Officer.

Award:

The claim is denied.



Richard K. Hanft, Chairman



Scott M. Goodspeed, Carrier Member



Zachary J. Wood, Employee Member

Dated at Chicago, Illinois, October 20, 2022