

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 147
)	
and)	
)	Award No. 147
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
NORFOLK & WESTERN RAILWAY COMPANY))	

Richard K. Hanft, Chairman and Neutral Member
Adam Lively, Carrier Member
Adam Gilmour, Organization Member

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

1. The Carrier’s discipline (dismissal) of Mr. C. Boings, by letter dated December 16, 2022, in connection with his alleged failure to follow instructions and violation of the Carrier’s Policy on Drugs and Alcohol (‘Rule G’) in that on November 3, 2022, he refused to provide breath and/or urine sample(s) for mandatory drug and alcohol testing and alleged failure to follow instructions in connection with the above charge in that he failed to comply with the instructions issued to him by the Norfolk Southern Chief Medical Officer by letter dated January 31, 2022, was capricious, excessive, harsh and unwarranted (Carrier’s File MW-ATLA-22-52-SG-782 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Boings shall now be reinstated to service and be cleared of the charges, with all rights and back pay restored.”

FINDINGS:

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employe 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 was discharged for violation of Carrier’s Rule “G” on May 7, 2021 and reinstated February 8, 2022 subject to compliance with the Carrier’s Drug and Alcohol Rehabilitation Services (“DARS”). Claimant signed a letter on February 7, 2022 acknowledging that he had received, read, understood and agreed to the Carrier’s Drug and Alcohol policies.

Those policies provide in relevant part that:

“All NS employees are responsible for arriving to work fit for duty. They are required to comply with Rule “G”, NS’ drug and alcohol plan, applicable federal regulations and all requested tests, including observed tests, when called for by the MRO, CMO or this plan, and to remain at the collection site until testing is complete. NS employees may not refuse mandatory tests and supervisors may instruct employees to cooperate with collection. NS employees must complete any requested paperwork pertaining to drug and alcohol testing under this plan.”

And:

“REFUSAL TO TEST

An employee who refuses to provide a breath or urine sample for mandatory alcohol/drug testing when properly instructed to do so will be subject to dismissal and/or regulatory action for failure to obey instructions...”

The record reflects that on the Morning of November 3, 2022 at 5:27 a.m. Claimant walked out of the Carrier-provided lodging and approached the Charging Officer’s vehicle. Claimant stated that he could not report for work that morning because he had to leave to attend to a sick child at home. The Charging Officer told the Claimant that he was to report for a mandatory drug/alcohol test at 6:00 a.m. at Room 105 of the lodging facility. The Claimant told the Charging officer that he couldn’t report for the mandatory test because he had to go home to attend to a sick child. The Charging Officer testified that the Claimant went back inside the lodging facility around 5:45 a.m. and that the Charging Officer was informed at around 6:10 a.m. by the testing personnel that Claimant did not appear for the test. NS Health Services contacted the Charging Officer to inquire about the situation and upon hearing that Claimant left on account that he had a sick child, advised the Charging Officer that Claimant could be eligible for an emergency exemption due to a sick child, but that he would have to provide a doctor’s note within a twelve-hour period.

Process Engineer, Adam Lillie, contacted Claimant and instructed him that he needed to provide a doctor’s note for his sick child to substantiate him not being able to take a drug test for his mandatory follow-up. Claimant never provided the required doctor’s note needed for the drug test exemption and never contacted Manager Program Maintenance Adam Lillie to advise him that he would be unable to provide the note or was having issues obtaining the note in the time given.

Claimant was summoned to a formal Investigation on the property on November 28, 2022 and based on the evidence presented during the investigation, Claimant was found guilty of failure to follow instructions and violation of the Carrier’s Policy on Drugs and Alcohol (‘Rule G’), and that he failed to comply with the instructions issued to him by the Norfolk Southern Chief Medical Officer by letter dated January 31, 2022. By letter dated December 16, 2022, Claimant was notified that he was dismissed.

Thereafter, the claim progressed on-property in the customary manner, however, no accord could be reached and the claim now comes before this Board for final adjudication.

The Board has carefully reviewed the investigation transcript and the full record of this case that was developed on the property. We have further considered the parties’ arguments as set forth in their submissions at arbitration. Although the Organization argues that Claimant’s due process rights were violated because more than one Carrier official was involved in drafting the Charge Letter in this matter and that the Carrier refused to provide any correspondence between the parties involved in drafting the Charge Letter, the Board finds that the Organization’s argument is without merit and Claimant received all due process rights guaranteed by the parties’ Agreement.

Moreover, the Board finds the Organization’s argument that because the Claimant did not report to work and did not receive compensation for November 3, 2022 that he was under no obligation to follow the Charging Officers instructions to report for the mandatory drug test

to be without merit. Claimant signed an acknowledgement of his obligation to provide breath and/or urine samples for mandatory tests and he was in Carrier-provided lodging when the collection was scheduled to take place. Claimant testified at the Investigation that he could have provided a sample before 6:00 a.m. and before leaving for home. He had an obligation under his reinstatement agreement to comply with DARS and NS Policies and he refused to hold up his end of the bargain.

Further, Claimant in this instance was afforded the opportunity to claim an emergency exemption but Claimant never provided the required doctor's note needed for the drug test exemption and never contacted the Manager of Program Maintenance to advise him that he would be unable to provide the note or was having issues obtaining the note in the time given.

The Board thus finds that the Claimant's dismissal was warranted based on the facts that Claimant refused to provide a breath and/or urine sample when properly ordered to do so and failed to provide required documentation or advise the Manager Program Maintenance that he was having issues obtaining the documentation. The Board can find no reason to disturb the actions taken on the property.

Award:

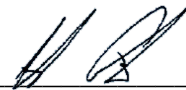
Claim denied.



Richard K. Hanft, Chairman



Adam Lively, Carrier Member



Adam Gilmour, Employee Member

Dated at Chicago, Illinois, December 3, 2024.