

**PUBLIC LAW BOARD NO. 6935**

PARTIES	)	BROTHERHOOD OF MAINTENANCE OF WAY
	)	EMPLOYEES DIVISION - IBT RAIL CONFERENCE
	)	
TO	)	
	)	
DISPUTE	)	THE KANSAS CITY SOUTHERN RAILWAY COMPANY

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

1. The discipline (dismissal) imposed upon Mr. B. Lane, by letter dated March 17, 2020, for alleged violation of General Code of Operating Rules (GCOR) Rule 1.5 - Drugs and Alcohol and The Kansas City Southern Railway Company’s Drug and Alcohol Free Workplace Policy was severe, harsh and an abuse of Carrier discretion (System File KCS702SN20D/2020-0123 KCS).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Lane shall ‘. . . be returned to work on his position of Foreman, and the claimant shall be made whole for all financial losses as a result of the violation, including compensation for the straight time for each regular workday lost and holiday pay for each holiday lost. This is to be paid at the rate of position assigned to the claimant at the time of removal of service. This amount is not to be reduced by earnings for alternate employment, obtained by the claimant while wrongfully removed from service. This should also include any general lump sum payment or retroactive general wage increase provided in any applicable agreement that becomes effective while claimant was out of service. Any overtime needs to be included for the lost overtime opportunities for any position the claimant could have held during the time he was removed from service, or on overtime paid to any junior employee for work the claimant could have bid and performed had he not been removed from service. Any health, dental and vision care insurance premiums, deductibles and copays that he would not have paid had he not been unjustly removed from service.’ (Employees’ Exhibit ‘A-2’).”

**FINDINGS:**

Upon consideration of the entire record and all of the evidence, the Board finds 1) the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended; 2) PLB 6935 is duly constituted by Agreement and has jurisdiction over this dispute; and 3) the parties received notice of the hearing.

On March 21, 2016, Claimant entered on duty with the Carrier and, as of February 2020, was assigned to Gang 714 as Foreman.

On February 15, 2020, Claimant attended a Mardi Gras parade where he imbibed alcohol. On several occasions during the parade, Claimant tabled his drink and, when he picked it up to resume drinking, did not observe whether it was his drink or the drink of another person.

On February 18, 2020, Claimant was subjected to a random drug and alcohol test required by Federal Railroad Administration (“FRA”) regulations at 49 C.F.R. Part 219. The Carrier received notice on February 21, 2020, that Claimant scored a positive test for the controlled substance oxymorphone; he was removed from service and referred to the Employee Assistance Program (“EAP”). Based upon an evaluation and recommendation, Claimant completed eight (8) hours of Drug and Alcohol Education and, as recommended, subjected himself to another drug test. On February 24, 2020, Claimant scored a negative test for all opiates.

The parties agreed to March 5, 2020, for a formal investigative hearing; Claimant was present and represented. Following the hearing, the Carrier assessed Claimant the discipline of dismissal on March 17, 2020, for violations of GCOR 1.5 - Drugs and Alcohol (controlled substance - opioid) and the Carrier’s Drug and Alcohol Free Workplace Policy.

The Organization appealed Claimant’s dismissal; it asserts the Carrier preconceived Claimant’s guilt, failed to meet its burden of proof and assessed unjustified, harsh and overly excessive discipline of dismissal. This claim was handled in the usual manner, up to and including conference held on July 15, 2020, and is now properly before the Board for a decision.

Undisputed is that Claimant tested positive for an opioid which violates GCOR 1.5 - Drugs and Alcohol; this rule violation is a dismissal infraction under the KCS’ Discipline Policy. The BMWF recognizes that substance abuse is a major health problem and notes the Carrier’s Drug and Alcohol Free Workplace Policy acknowledges “alcohol and drug abuse and addiction are treatable illnesses” and “early intervention and support improve the success of rehabilitation.” Claimant cooperated with the FRA random drug test, obtained help through the EAP, completed Drug and Alcohol Education and underwent another drug test where he scored a negative result for all opioids. Given these circumstances, dismissal is unjustified, harsh and overly excessive.

This tribunal’s authority to review, reduce and rescind discipline including dismissal is firmly established and recognized in PLB 6920 - Awards 5, 19, 32, 49, 106, and 116. On-property decisions PLB 6935 - Award 118 and PLB 6355 - Award 11 reinstated first-time offenders testing positive for controlled substances. Claimant is a first-time offender. In the stand-alone particulars of this claim, the Board finds Claimant’s dismissal is harsh and overly excessive. In lieu of dismissal, the Board reinstates Claimant without backpay and subject to Claimant executing the Carrier’s offered Rule G Reinstatement Agreement and Release, which is designed to rehabilitate and prevent future violations of GCOR 1.5 - Drugs and Alcohol and the Carrier’s Drug and Alcohol Workplace Free Policy. The Carrier has thirty (30) days to comply with this order.

AWARD: Claim sustained in accordance with the findings.

Patrick Halter /s/  
Patrick Halter  
Chair - Neutral Member

  
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John Schlismann  
Employee Member  
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Louis Fernandez  
Carrier Member

Date: *November 15, 2021*