

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT 1048

Brotherhood of Maintenance of Way Employees)	
Division – IBT Rail Conference)	
)	Case No. 220
And)	
)	Award No. 220
Norfolk Southern Railway Company (Former)	
Norfolk & Western Railway Company))	
_____)	

Richard K. Hanft, Chairman and Neutral Member
D. M. Pascarella, Employee Member
D. L. Kerby, Carrier Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. L. Brown, issued by letter dated May 13, 2014, in connection with his alleged failure to comply with the Carrier’s policy on Alcohol and Drugs and the instructions of the Medical Director in his letter dated April 29, 2013 in that his specimen submitted on February 11, 2014 for a drug screen was positive for cocaine, was not pursuant to a fair, impartial investigation (Carrier’s File MW-DECR-14-21-BB-127 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant L. Brown shall be reinstated with all rights and privileges and pay for all lost time.”

FINDINGS:

Special Board of Adjustment Board 1048, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

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

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 entered service on June 4, 1979 as a Track Laborer. On October 23, 2012 Claimant failed a drug test, was removed from service and was admitted to Carrier's Drug and Alcohol Rehabilitation Service ("DARS"). Claimant completed DARS services on April 4, 2013 and was reinstated to service under the express condition that failure to keep his system free from prohibited substances would subject him to dismissal. Those were the terms of reinstatement Claimant agreed to.

In February, 2014 Claimant was assigned as a hi-rail crane operator. As such, he was required to possess a Commercial Driver's License ("CDL"). Possession of a CDL subjects the holder to random drug screening pursuant to Department of Transportation Regulations. On February 11, 2014 Claimant was required to submit to a random urine screening. The test results came back positive for cocaine. Claimant, based on the test results, was again removed from service and summoned to a formal investigation.

After three (3) postponements, the investigation was held on May 7, 2014. Claimant did not appear at the investigation, but his representative did. After attempts to contact Claimant via telephone failed, the investigation proceeded *in absentia*. Claimant was found to have failed to comply with the Carrier's Policy on Alcohol and Drugs and the instructions of Carrier's Medical Director to keep his system free from prohibited substances and, as a result, was dismissed by letter dated May 13, 2014.

The Organization does not dispute the findings of the drug test or the propriety of dismissal as the penalty for the second violation of Carrier's Drug and Alcohol policy. The Organization does, however, strenuously maintain that Claimant was denied a fair and impartial hearing because it was held *in absentia*. The Carrier avers that the evidence entered at the investigation showed a discrepancy in the address used by the Carrier to contact claimant to apprise him of the impending investigation. The Organization asserts that an investigation held without proper notice is fatally improper under the Agreement and reasons that no discipline that flows from the improper investigation can carry any validity and therefore, all charges against the Claimant must be dismissed.

The Board's review of the record developed on the property reveals, however, Carrier's Exhibit 3 that is the letter sent by Certified Mail Return Receipt Requested to Claimant on April 7, 2014 summoning him to the investigation and Carrier's Exhibit 4, a USPS digital receipt showing Certified Parcel 91719999991703379189023, the letter referenced in Exhibit 3, that was signed for by Claimant on April 9, 2014. Hence, the Organization's argument that Claimant did not receive proper notification to attend the investigation is without merit.

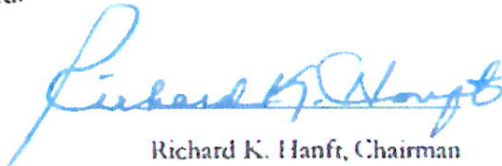
Likewise, the Organization's contention that the hearing held *in absentia* deprived Claimant of due process is addressed by the System Discipline Rule that states in relevant part:


"If the charged employee fails to attend the duly scheduled investigation, without having provided evidence of good cause for such failure to attend, the Carrier may proceed with the investigation *in absentia* and such proceeding *in absentia* shall not constitute the basis for any claim with respect to such employee's right to contractual due process."


Given the evidence adduced during the handling of the matter on the property, the Board can find no basis to disturb the decision reached on the property. The Claim is denied.

AWARD:

The Claim is denied.


Richard K. Hanft, Chairman


D. M. Pascarella, Employee Member


D. L. Kerby, Carrier Member

Dated at Chicago, Illinois February 2, 2018