

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1048

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	Case No. 238
)	
and)	
)	Award No. 238
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
NORFOLK & WESTERN RAILWAY COMPANY)	

Richard K. Hanft, Chairman & Neutral Member
D. M. Pascarella, Employee Member
S. M. Goodspeed, Carrier Member

Hearing Date: July 25, 2019

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

1. The Carrier’s discipline (dismissal) of Mr. R. Ward, issued by letter dated October 5, 2017, in connection with his alleged conduct unbecoming a Norfolk Southern employee in that he knowingly omitted and/or falsified material medical information on his July 20, 2004 MED-15 Form and his Medical Examination Report for Commercial Driver Fitness Determination also dated July 20, 2004 and again on his Report of Medical Evaluation for CDL/Non-CDL Driver recertification form dated June 7, 2016, when he failed to disclose a known medical condition by checking ‘No’ regarding his history of ‘epilepsy and seizures, numbness, weakness or paralysis, tingling or memory loss, stroke, TIA, paralysis or weakness’, on all medical forms even though medical records show a history of such symptoms and ‘multiple stereotypical episodes’ since 2003, which facts were also seen to place Claimant in violation of Norfolk Southern Safety and General Conduct Rule 917 in that he thereby knowingly failed to notify Norfolk Southern Health Services of a serious medical condition which could impact his ability to perform his job safely, was harsh and excessive [Carrier’s File MW-CHAR-17-10-ME-496 (MW-PRN) NWR].

2. As a consequence of the violation referred to in Part 1 above, Claimant R. Ward shall be reimbursed for all lost time and restored with all rights and privileges.”

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 entered the Carrier's service in 1994 and was regularly assigned as a Roadway Machine Repairman. Claimant had a twenty-three (23) year unblemished service record at the time of the events giving rise to this dispute.

One aspect of Claimant's job duties required him to operate a Federal Motor Carrier Vehicle on public roads and required Claimant to maintain a Commercial Driver's License ("CDL"). Accordingly, Claimant filled out and signed a MED-15 Form and a Medical Examination Report for Commercial Driver Fitness Determination on July 20, 2004 which was certified by a medical doctor at that time. Again, Claimant filled out and signed a Report of Medical Evaluation for CDL/Non-CDL Driver recertification form on June 7, 2016 which was again certified by a medical doctor at that time.

Claimant was involved in an accident on April 17, 2017 wherein Claimant lost consciousness and hit a tree with a Carrier vehicle. Claimant was taken to the Bucyrus Hospital for treatment of injuries sustained in the accident and was seen there by a Neurologist. That Neurologist diagnosed Claimant to have a seizure-related disorder and prescribed Claimant an antiepileptic medication. That physician also noted that Claimant had a fourteen (14) year history of "Seizures, numbness, weakness or paralysis, tingling or memory loss."

Claimant disagreed with that Neurologist's diagnosis and refused to take the prescribed medication until he could get a second opinion. Claimant saw a second physician in early June, 2017. That physician's statement to the Ohio Department of Public Safety, Bureau of Motor Vehicles clearly states that Claimant's physical and/or history did not indicate any neurological disorder, prescribed no medication for the Claimant and indicated that Claimant should be permitted to retain his driving privileges.

The Norfolk Southern Chief Medical Officer requested medical information from the Claimant in order to determine his fitness for duty. The Medical Officer, after reviewing the records, reported to Carrier Management that Claimant had suffered "multiple episodes" related to a seizure disorder for more than fourteen (14) years and was recommended for treatment with anti-epileptic medication.

In light of the Claimant's statements on the MED-15 Forms and Medical Examination Report for Commercial Driver Fitness Determinations that seemed to be in conflict with what the Medical Officer reported to Claimant's supervisors, Claimant was charged with conduct unbecoming a Norfolk Southern employee in that he knowingly omitted and/or falsified material medical information on his July 20, 2004 MED-15 Form and his Medical Examination Report for Commercial Driver Fitness Determination also dated July 20, 2004 and again on his Report of Medical Evaluation for CDL/Non-CDL Driver recertification form dated June 7, 2016. Claimant was further charged with violation of Norfolk Southern Safety and General Conduct Rule 917 in that he failed to notify Norfolk Southern Health Services of a serious medical condition which could impact his ability to perform his job safely.

A formal investigation was held on September 20, 2017 and Claimant was found guilty of both charges. The Organization appeals the determination made on the property.

Claimant, the record reveals, has been seen by at least five (5) physicians over his carrier with the Carrier: one who manages his treatment for diabetes, two more who certified his MED-15 and CDL Certifications, one who saw him immediately after a vehicular collision and one from which Claimant sought a second opinion after the diagnosis at the Bucyrus Hospital. Four (4) of those five (5) physicians find no neurological problems with the Claimant.

The Board finds that there was insufficient probative evidence on this record to support the determination made on the property and the discipline assessed cannot stand. Accordingly, Claimant shall be reimbursed for all time lost, offset by any medical benefits received, with all rights and benefits restored and shall be reinstated to service upon the successful completion of the return to work process, including the procurement of any and all requested medical records that the Carrier may request.

AWARD:

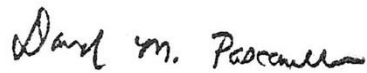
Claim sustained according with the findings.



Richard K. Hanft, Chairman



S. M. Goodspeed, Carrier Member



D. M. Pascarella, Labor Member

Dated at Chicago, Illinois, August 26, 2019