

**NATIONAL MEDIATION BOARD**  
**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

BROTHERHOOD OF MAINTENANCE OF WAY	)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE	)	Case No. 286
	)	
and	)	
	)	Award No. 286
NORFOLK SOUTHERN RAILWAY COMPANY	)	
(FORMER SOUTHERN RAILWAY COMPANY)	)	

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

Hearing Date: July 24, 2019

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

1. The Carrier’s discipline (dismissal) of Mr. J. Poynter, issued by letter dated September 29, 2017, 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 a letter dated January 30, 1997, to keep his system free of prohibited substances when on August 21, 2017, notice was received that he tested positive for prohibited substances in a random drug screen conducted on August 9, 2017 was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-CN-17-32-LM-677 SOU).
  
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Poynter shall be reinstated to service with all seniority rights restored and all entitlements to and credit for benefits restored including vacation and health insurance benefits, being made whole for all financial losses as a result of the violation including compensation for: (1) straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to Claimant at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by Claimant while wrongfully removed); (2) any general lump-sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service; (3) overtime pay for lost overtime opportunities based on overtime for any position Claimant could have held during the time Claimant was removed from service or on overtime paid to any junior employee for work Claimant could

have bid on and performed had Claimant not been removed from service and; (4) health, dental and vision care insurance premiums,  
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deductibles and co-pays that he would not have paid had he not been unjustly removed from service with, finally, all notations of the dismissal removed from all Carrier records.”

### 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.

Claimant in this matter entered the Carrier's service in September 1990 as a Track Laborer. On October 16, 1996, Claimant tested positive on a random drug screen and was removed from service and referred to the Employee Assistance Program and went through its Drug and Alcohol Rehabilitation Services ("DARS").

Claimant was reinstated to active service upon completion of the program with written instructions issued January 30, 1997 from the Carrier's Medical Director to keep his system free from prohibited substances and that failure to do so would result in dismissal from service with Norfolk Southern. Claimant testified at the Investigation on the property that he was aware of the requirement that he remain free from prohibited substances as a condition of reinstatement and continued service.

On August 9, 2017 Claimant was working as a various headquartered Laborer on Track Maintenance Gang TM-437. Claimant underwent a random FRA drug screening. Claimant again tested positive for the presence of a prohibited substance, Amphetamine-Methamphetamine.

Claimant was taken out of service and summoned to an investigation held on September 13, 2017 to determine his responsibility, if any, concerning his failure to abide by the Medical Director's written instructions and violation of Rule "G" of Carrier's Operating rules. Claimant was found to be violation of the instructions and Rule and in consideration of the nature of the offenses and Claimant's past service record, Claimant was dismissed.

After thoroughly reviewing and considering the record and the parties' presentations, the Board can find no reason to disturb the determination made on the

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property. Claimant was afforded all procedural due process required under the Parties' Agreement; there was undisputed evidence that Claimant failed to keep his body free from prohibited substances and testified that he was well aware that his failure to remain free from prohibited substances in his system would result in dismissal.

Accordingly, the claim is denied.

AWARD:

Claim denied.

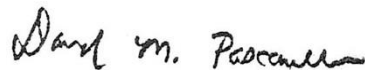


Richard K. Hanft, Chairman



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S. M. Goodspeed, Carrier Member



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D. M. Pascarella, Labor Member

Dated at Chicago, Illinois, August 26, 2019