

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	Case No. 292
)	
and)	
)	Award No. 292
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. D. Bowman, issued by letter dated December 15, 2017, in connection with his alleged: (1) conduct unbecoming an employee and violation of Norfolk Southern Safety and General Conduct Rule G and the Norfolk Southern Policy on Alcohol and Drugs and (2) his failure to follow the instructions of the Norfolk Southern Medical Director, in that he failed to keep his system free of prohibited substances despite having been instructed to do so in letters dated January 8, 1998 and April 12, 2001 when the urine sample that he provided on September 20, 2017 tested positive for cocaine was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-DECR-17-110-LM-756 SOU).

2. As a consequence of the violation referred to in Part 1 above, Claimant D. Bowman 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, 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 on April 12, 1982 as a Track Laborer. By 1997, the record shows, Claimant had availed himself to the Drug and Alcohol Rehabilitation Service ("DARS") provided to Norfolk Southern employees. By letter dated January 8, 1998, Claimant was instructed by Carrier's Medical Director to abide by the Company's Policy on Drugs and Alcohol and keep his system free from prohibited substances. Further, the Medical Director's instructions advised Claimant that any future positive test would subject him to dismissal.

Again, in May, 1999 Claimant tested positive on a drug screening and was permitted to re-enter the DARS Program. That rehabilitation period was completed on March 28, 2001 and Claimant was returned to service. On April 12, 2001 the Carrier's Medical Director again corresponded with Claimant advising him that he was to keep his system free from prohibited substances and further notifying Claimant that if at any time he failed to comply with the Company's Policy of Drugs and Alcohol or his instructions to stay free from prohibited substances in his system that he would be subject to dismissal and would not be eligible to be reinstated to service under the DARS Program.

On September 20, 2017 Claimant submitted to a random FRA drug screening and the results came back positive for Cocaine in his system. He was taken out of service pending a formal investigation that was held on December 6, 2017. After consideration

of the record established on the property, the Hearing Officer found Claimant responsible for failure to follow the Medical Director's Instructions and violation of Rule "G" of Norfolk Southern's Operating Rules and advised Claimant that he was dismissed from service.

After thorough review of the record developed on the property and the Parties' arguments brought before the Board, there is nothing on this record that leads us to conclude that the determination made on the property should be disturbed. There is simply no evidence on this record that the procedural due process rights afforded Claimant by the Parties' Agreement were not respected, there was no dispute as to the veracity of the evidence presented and Claimant has twice before been advised, in writing, that any future violations of the Carrier's Policy on Drugs and Alcohol or failure to comply with the Medical Director's explicit written instructions would result in dismissal. For those reasons, the claim is denied.

AWARD:

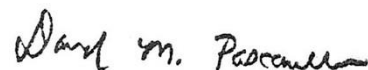
Claim denied.



Richard K. Hanft, Chairman



S. M. Goodspeed, Carrier Member



D. M. Pascarella, Labor Member

Dated at Chicago, Illinois, August 26, 2019.