

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

BROTHERHOOD OF MAINTENANCE OF WAY	)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE	)	Case No. 293
	)	
and	)	
	)	Award No. 293
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. Beshears, issued by letter dated March 16, 2018, 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 27, 2015, when he tested positive for prohibited substances in a random drug screen on December 21, 2017 was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-BLUE-18-12-LM-035 SOU).
  
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Beshears 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.

After thoroughly reviewing and considering the record and the parties’ presentations, the Board finds that the claim should be disposed of as follows:

Claimant entered the Carrier's service on May 1, 2006 as a Track Laborer. On May 28, 2013, Claimant submitted to a random drug screening that indicated prohibited substances in Claimant's system and he was removed from service and referred by Carrier's Medical Director to the Manager of the Drug and Alcohol Rehabilitation Service.

Claimant successfully completed the rehabilitation and was returned to active service. Claimant was sent a letter from the Carrier's Medical Director, Express Mail Parcel No. EM679986782 - Return Receipt Requested, on January 27, 2015 instructing him to keep his system free from any prohibited substances as defined in Rule "G" of the Norfolk Southern Operating Rules. The letter also explained that Claimant would be subject to follow-up testing for a period of five (5) years after completion of rehabilitation and return to service. The letter further advised Claimant that any future positive test results would subject him to dismissal.

On December 20, 2017 Carrier supervision was notified by the Norfolk Southern Medical Services that Claimant was due for a follow-up drug screening pursuant to his release for service by DARS. The Carrier arranged for a drug screening to be conducted on the following day, December 21, 2017 and the results from that test were reported to Carrier supervision on January 8, 2018. Claimant's results showed he tested positive for Hydrocodone, Oxycodone and Oxymorphone. Claimant was put on Medical hold and an investigation was scheduled for February 7, 2018. After one (1) postponement, an investigation was held in absentia on March 7, 2018. Claimant was advised by letter

dated March 16, 2018 that after consideration of the record developed on the property, that he was dismissed from service.

Given the record presented to this Board, we can find no reason to justify disturbing the determination made on the property. The Claim is therefore denied.

AWARD:

Claim denied.

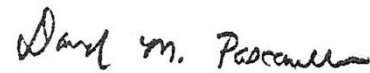


Richard K. Hanft, Chairman



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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.