

AWARD NO. 312  
Case No. 312

File No. Ingram-DR-04-21-INV /MW-GNVL-21-14-LM-252 SOU

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

PARTIES ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
          ) DIVISION – IBT RAIL CONFERENCE  
TO )  
      )  
DISPUTE ) NORFOLK SOUTHERN RAILWAY COMPANY  
          ) (FORMER SOUTHERN RAILWAY COMPANY)

**STATEMENT OF CLAIM:**

Claim on behalf of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. D. Ingram, issued by letter dated April 26, 2021, in connection with his alleged conduct unbecoming an employee and omission and falsification of information in that he failed to disclose information and/or failed to accurately answer questions related to his medical history on medical examination report forms for commercial driver medical certifications on March 8, 2017, January 18, 2019 and February 16, 2021 was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh and excessive (System File Ingram-DR-04-21-INV /MW-GNVL-21-14-LM-252 SOU).

2. As a consequence of the violation referred to in Part 1 above, Claimant D. Ingram shall now have his dismissal set aside with all notations thereof removed from all Carrier records and he shall also be restored to the Carrier's service with all seniority and restored to all financial and benefit losses, such as vacation and health insurance benefits occasioned as a result of the violation, including: (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 dismissed); (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 dismissed."

## FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

During the time frames relevant to this case, Claimant Dustin Ingram was employed by the Carrier as a track laborer. On February 19, 2021, the Carrier's Chief Medical Officer was notified by CHS that a commercial driver medical examination (CDME) on February 16, 2021 had resulted in a disqualification, as Claimant did not meet the FMSCA vision requirement. It was noted that Claimant's left eye vision was 20/100 and that he had an irregular pupil. A review of the medical history Claimant had completed indicated that he denied any eye or vision problems or surgery.

The CMO spoke to Claimant, after which she prepared a report which stated that Claimant confirmed that he had an eye condition in his left eye since childhood and that he had had Lasik in his right eye. The report also stated that Claimant confirmed that a provider helped him on a prior vision test. The CMO reported that she had reviewed records received from Claimant's optometrist, and prior CDMEs on which Claimant had marked "no" regarding eye issues.

By notice dated April 1, 2021, Claimant was directed to attend a formal investigation to determine his responsibility, if any, in connection with conduct unbecoming an employee and omission and falsification of information in that he failed to disclose information and/or failed to accurately answer questions related to his medical history on Medical Examination Report forms for Commercial Driver Medical Certifications on March 8, 2017, January 18, 2019, and February 16, 2021. The hearing was held April 12, 2021, after which Claimant was found to be guilty as charged, and by notice dated April 26, 2021, he was dismissed from service.

The Board is informed that the Carrier unilaterally reinstated Claimant to service November 28, 2022, but that Claimant did not return to service and consequently forfeited his seniority on January 10, 2023. We are also informed that there was no challenge to the forfeiture of seniority. Any

potential liability in this case would therefore be limited to the time period prior to January 10, 2023.

The Organization challenges the discipline assessment on both procedural and substantive grounds. It first contends that Claimant was denied his right to a fair and impartial hearing when the Carrier failed to issue precise charges, stating that the notice of investigation did not reference the specific rule Claimant was alleged to have violated. The Organization asserts that the lack of a rule citation is a violation of the applicable agreement, and it argues that the discipline should be overturned on that basis alone.

The Organization also contends that the Carrier did not initiate the charges in compliance with the agreement. It states that the Carrier had notice of the alleged violation on February 26, 2021, but that it did not issue the notice of investigation and hold the hearing within 30 days thereof. It states that the CMO is a Carrier officer and that the date of her knowledge of a possible violation was the relevant date for determining when charges were required to be filed. The Organization states that this defect also requires the discipline to be overturned.

With respect to the merits, the Organization submits that the Carrier failed to meet its burden of proof in connection with all of the charges. It contends that the Carrier did not establish that Claimant made false or misleading statements, arguing that the Carrier's burden of proof on such charges is elevated, and that the proof must be at least clear and convincing. The Organization states that the record establishes that Claimant believed he was honest and forthright when he filled out his medical paperwork, citing his testimony that his medical conditions did not change between exams and that he had had the condition in his left eye since birth, so he did not consider it an issue. It also notes that he did not consider Lasik to be surgery. The Organization posits that Claimant simply answered the questions as they were asked, and that he did not intend to provide false or misleading information when he filled out his medical paperwork.

The Organization further maintains that the discipline assessed is arbitrary and unwarranted. The Organization points out that Claimant has 13 years of service with only minor discipline on his

record, and it contends that such discipline is not relevant to the facts of this case. The Organization concludes that dismissal was not warranted, and that Claimant should be returned to service.

The Carrier, on the other hand, maintains that there is no reason to disturb the discipline assessment. It states that Claimant received a fair and impartial hearing, and it argues that there is no agreement requirement to cite a specific rule in a notice of investigation. The Carrier states that the purpose of a notice of investigation is to make the employee aware of the matter to be investigated so that a defense may be prepared, and it avers that the notice of investigation in this case did just that. With respect to the time limit arguments raised by the Organization, the Carrier cites arbitral precedent as holding that time limits do not begin running until a Carrier officer with authority to administer discipline has knowledge of potential wrongdoing. It states that the CMO provided her summary to the charging officer on April 1, 2021, so that the charges were then initiated within the timelines set forth in the agreement.

The Carrier also asserts that the evidence adduced at the hearing fulfilled its burden of producing substantial evidence to establish Claimant's guilt. It states that the testimony and statements presented during the hearing conclusively proved that Claimant was guilty of omitting and falsifying information when he failed to disclose his eye and vision issues on Medical Examination Report Forms for Commercial Driver Medical Certifications on January 18, 2019 and February 16, 2021. The Carrier points to the summary prepared by the CMO, which identified specific instances in which Claimant failed to identify two medical conditions and to report surgery, which conditions were confirmed by review of medical records received from Claimant's physician. It states that Claimant admitted he had those conditions and that he had Lasik, and it points out that he admitted he had been helped on a vision test on at least one occasion. The Carrier states that Claimant's excuses for not disclosing his history are not believable.

With respect to the level of discipline imposed, the Carrier states that it is imperative that employees be honest when questioned about medical conditions and health history, especially when attempting to obtain a CDL. It points to prior awards which have upheld dismissal for similar

conduct. It states that it is well within its rights to treat the violation as it did, and that it has no obligation to retain in its employ an individual who commits dishonest misconduct. The Carrier states that there are no mitigating circumstances which warrant modification of the discipline, and it asserts that dismissal is appropriate in light of the seriousness of the offense.


We have carefully reviewed the record in this case and the parties' arguments, and we find no procedural barrier to our consideration of the merits. We find that the notice of investigation adequately apprised Claimant and his representative of the matter to be investigated. The fact that Claimant personally discussed the issues regarding the forms with the CMO indicates to us that he was aware of the specific items at issue. With respect to the timing of the notice of investigation and hearing, we concur with the holdings of the cases cited by the Carrier that time limits for such matters do not commence until a manager with authority to initiate disciplinary proceedings has knowledge of the alleged misconduct, and here we do not believe the CMO had such authority.

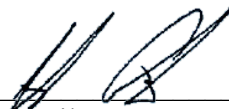
Turning to the merits, we find that the Carrier has provided sufficient evidence to establish that Claimant was guilty of submitting false information on the medical questionnaires. Whether we apply the standard of substantial evidence or an elevated standard of proof as suggested by the Organization, we believe that the record adequately establishes that Claimant was aware that he had medical conditions which should have been disclosed, and that he nevertheless failed to do so. Claimant admitted that he accepted assistance with a vision test, and we do not believe that is indicative of good faith conduct on his part. At best, his testimony on that point presented a credibility issue which the Carrier was not obligated to resolve in Claimant's favor, and which we are not in position as an appellate body to second guess.


Having found that the charges were proven, we turn to the level of discipline. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion. As the Carrier notes, many prior awards have upheld dismissal for offenses such as these, as those actions break the bonds of trust necessary in the employment relationship. On this record, we cannot find that the Carrier's actions were an

abuse of discretion, so we will not substitute our judgment for the Carrier's now.

AWARD: Claim denied.

  
Michael D. Phillips  
Chairman and Neutral Member

  
Adam Gilmour  
Employee Member

  
Scott Goodspeed  
Carrier Member

Dated: November 13, 2023