

SPECIAL BOARD OF ADJUSTMENT NO. 1049

CASE NO. 353, AWARD NO. 353

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION**
TO)
DISPUTE) **NORFOLK SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Dickens, issued by letter dated December 8, 2023, in connection with his alleged (1) failure to ensure the way was clear, stop short and/or maintain control of the plate alignment machine (APAM 08056) he was operating, resulting in a collision with the rail heater machine (RHM 16030), causing damage to both machines and endangering the safety of himself and his coworkers at/near Mile Post G 38.0 in Grovania, Georgia at approximately 11:05 A.M. on October 11, 2023, while working as a machine operator and (2) violation of the Carrier’s Policy on Drugs and Alcohol (‘Rule G’), in that he tested positive for prohibited substance(s) on a reasonable cause drug and alcohol test administered on October 11, 2023, also while working as a machine operator in Grovania, Georgia, was improper, harsh and excessive.
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Dickens shall now be ‘...reinstated and cleared of the unsubstantiated charges with all rights, privileges, and back pay...’ including seniority and vacation unimpaired with all charges expunged from his record (Employee’s Exhibit ‘A-2’). [File: MW-PM-23-30-NR-765 SOU; NMB Code: 102]

FINDINGS AND OPINION

This Board, having jurisdiction over the dispute at issue, finds the parties herein to be employee and carrier, respectively, within the meaning of the Railway Labor Act, as amended. The parties were given due notice of the hearing held.

The record reflects that, on October 11, 2023, the Claimant was assigned to the R-3 Rail Gang as the operator of an Automatic Plate Aligning Machine (APAM) and working near Grovania, Georgia. Coming out of the hole and traveling to the work location, the Claimant’s machine collided with a Rail Heater Machine that was stopped ahead. Track Supervisor Hayes responded to the scene to assess the situation and gather pertinent details, after which the Claimant was administered a reasonable cause drug and alcohol test. The urinalysis results came back positive for Cocaine Metabolites.

By notice dated October 30, 2023, Claimant Jacob Dickens, a Carrier employee of approximately 18 months, was directed to attend a formal Investigation to determine his responsibility, if any, in connection with the charge that he failed “...to insure the way is clear, stop short and or maintain control of the plate alignment machine, APAM08056, that you were operating resulting in the collision with the rail heater machine, RHM16030, causing damage to both machines and endangering the safety of yourself and your coworkers. This occurred at or near milepost G380 in Grovania, Georgia, at approximately 11:05 AM on October 11, 2023, while working as a machine operator. Violation of Norfolk Southern Policy on Drug & Alcohol Rule G in that you tested positive for prohibited substances on a reasonable cause drug and alcohol test administered on October 11, 2023...”

Following the formal Investigation on November 20, 2023, and by correspondence dated March 15, 2024, the Claimant was notified of the Carrier’s conclusion that “...Based on the evidence adduced from this formal investigation, as well as my subsequent consideration of your Career Service Record (CSR) following the formal investigation, you are hereby assessed dismissal in all capacities from Norfolk Southern...” The Organization appealed the Carrier’s disciplinary action, including a discussion of the matter in an on-property conference. Unable to resolve the dispute, the matter is now properly before this Board for final and binding adjudication.

The Board has reviewed the evidence of record and the parties’ respective arguments. We considered the procedural objections raised by the Organization and found none that were fatal to the case. On the merits, substantial evidence supports the charges and the discipline assessed. However, given the unique facts and

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circumstances of this case and without setting any future precedent, the Board is willing to allow the Claimant to cooperate with the Carrier's Drug and Alcohol Rehabilitation Services (DARS) in an effort to return to his former position with the Carrier.

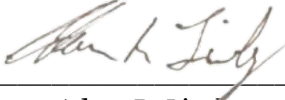
To that end, and in addition to the usual return-to-service requirements, within thirty (30) days of the execution of this Award, the Claimant is directed to present himself to a DARS counselor for evaluation. The Claimant will participate in any treatment program prescribed by DARS. Upon completion of the program, the Claimant shall be reinstated with seniority and employment rights restored, but without pay for time lost. Should the Claimant fail to present himself for DARS evaluation as provided above, or fail to complete any prescribed treatment program, he shall revert to dismissed status, and his employment will be permanently terminated.

The Claimant is urged to take full advantage of this opportunity to demonstrate that he can be a valued employee of this Carrier.

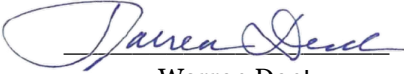
The Board will retain jurisdiction over this case for the sole purpose of resolving any issues that may arise with respect to the Claimant's reinstatement.

AWARD

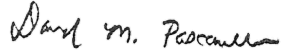
Claim sustained, in part, in accordance with the Findings.



Adam R. Livey
Carrier Member



Warren Dent
Neutral Member



David M. Pascarella
Employee Member

Dated: 3-10-2026