

LAW OFFICES  
**SOLOMON RICHMAN P.C.**

SIDNEY N. SOLOMON\*  
THEODORE C. RICHMAN  
FREDRICK J. RICHMAN

---

OF COUNSEL  
HARRIS D. KANTOR  
RONALD F. ROCKOWER  
ALAN M. NELSON  
JONATHAN P. RUBIN

3000 MARCUS AVENUE  
SUITE 1E5  
LAKE SUCCESS, NEW YORK 11042  
(516) 437-6443  
Voice Mail Ext. # 138  
(800) 560-6443  
FACSIMILE (516) 437-6434  
Direct E-Mail Address  
FRICHMAN@SOLOMONRICHMAN.COM

\* Deceased

February 3, 2022

**VIA FIRST CLASS MAIL AND E-MAIL**

Barbara Cisek  
Office of The Chairman  
Metropolitan Transportation Authority  
2 Broadway, Room 20.30  
New York, New York 10004

Anita L. Miller, Director  
MTA-HQ Labor Relations  
347 Madison Avenue  
New York, New York 10004  
[amiller@mtahq.org](mailto:amiller@mtahq.org)

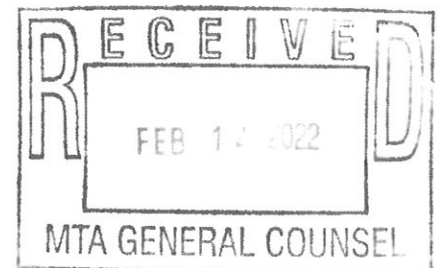
Phil Eng, President  
Long Island Rail Road  
93-02 Sutphin Blvd, 3rd Floor  
Jamaica, New York 11435  
[peng@lirr.org](mailto:peng@lirr.org)

Re: Ronaid Dolginko

Dear Ms. Cisek, Ms. Miller and Mr. Eng:

Please be advised that this firm represents Local 589 and its member Ronald Dolginko. Mr. Dolginko has been employed by the Long Island Rail Road since 1996 and has an impeccable work record/personnel file without a single instance of a disciplinary proceeding. On August 24, 2021, while out sick, Mr. Dolginko had open heart surgery which resulted in a double by-pass.

Mr. Dolginko has spent his entire period of employment with the Carrier working midnights at the Hillside Maintenance Complex. **In the position that he has held throughout his employment, he has never been subject to random drug testing and has never been a Regulated Service Employee (49 CFR Part 219).**



Approximately 2 ½ weeks prior to his planned return to work he appeared for a return to work physical at which time he was required to provide a urine sample for a drug test. As previously stated, he was not subject to random drug testing as his position is not and never was a "covered" job. Regardless of the fact that he was taking multiple prescriptions due to his coronary condition, he was not requested to provide a list of his prescription drugs. On December 17, 2021, he was put out of service due to a "failed drug test for marijuana metabolites". An independent lab test taken on December 22, 2021, resulted in a negative test result (copy attached hereto). It should be noted that neither the the LIRR Medical Assessment Policy (MED-005) or the Alcohol and Substance Abuse Policy (MED-001) provide for the administration of a drug test upon a Return to Work for this employee. Mr. Dolginko did not have a **CDL** license, was not involved with car moving or towing, and his position was not related to ATC.

Rule 53 of Collective Bargaining Agreement between the parties provides:

RULE 53  
Discipline

- (a) Employees will not be suspended nor dismissed from service without a fair and impartial trial.
- (b) The following types of offenses justify pre-investigation suspension when there is sufficient reason to believe the employee is guilty of the offense and that he/she might commit the offense again if not withheld from service: (1) theft; (2) unsafe practices; (3) serious insubordination; (4) threatening or abusive conduct; (5) fighting on duty or on Carrier property; (6) under the influence of alcohol or narcotics while on duty; (7) rape, assault or other serious criminal activities.

The aforementioned language is clear unambiguous and provides no room for misinterpretation. The language specifically provides the seven (7) instances when a member can be suspended prior to a fair and impartial trial. I submit to you the following:

1. Mr. Dolginko should not have been administered a drug test upon his return to work physical;
2. Mr. Dolginko was not covered under the Carrier's rules, was not a Regulated Service Employee, or covered under any other Federal or New York State mandates as he was not subject to drug testing other than for reasonable suspicion which did not exist in the present circumstances;
3. The Carrier blatantly disregarded the clear and unambiguous terms of the parties current Collective Bargaining Agreement, Rule 53(a) &(b) ;
4. The Carrier violated its own Corporate Policies and Procedures (MED-001 and Med-005).

5. The Carrier's actions in this matter without question are in violation of the terms of the parties Collective Bargaining Agreement during the Status Quo period.

In light of the aforementioned actions by the Carrier, if Mr. Dolginko is not immediately returned to duty with back pay the Organization will have no alternative but to seek an injunction requiring the Carrier to maintain the Status Quo. It is respectfully submitted that the Carrier restore Mr. Dolginko to pay status and conduct a prompt review of the circumstances resulting in his suspension without pay so that unnecessary litigation can be avoided. Every day that Mr. Dolginko remains out of service without pay constitutes a continuing injustice to a loyal employee and a failure by the Carrier to review, recognize and correct it's own mistakes.

Very truly yours,



FREDRICK J. RICHMAN

FJR/es  
Enclosure  
cc: Ricardo Sanchez

Z:\OFFICE\WPWIN\FILES\FRED\Dolginko ltr.wpd



**Test Results**

**Date Results Transmitted:** 2021-12-22 11:40 PM

**Transmitted By:** DRN

**Participant/Donor:** Ronald Dolginko

**SSN/EID:** \*\*\*\*\*5197

**CCF/Specimen ID:** 0220082052

**Specimen Type:** URINE

**Company:** NATIONAL DRUG SCREENING

**Location:** NATIONAL DRUG SCREENING

**Lab Account Number:** 379856

**Reason for Test:** OTHER

**Date Specimen Collected:** 2021-12-22

**Laboratory:** LabCorp

**Collection Site:** LABCORP - BABYLON, NY (W

**Collection Site Phone:** 6313215499

**Program:** NONDOT

**Date MRO Received CCF Copy 2:**

**Date Test Verified by MRO:** 2021-12-22

**Test Results**

**Panel - MARIJUANA (THC ONLY) - 798892 - 379856 8534380037**

**Drug**

Marijuana

**Results**

NEGATIVE

**MY DETERMINATION/VERIFICATION IS: NEGATIVE**

**Certified Medical Review Officer**

David Nahin M.D.

Signature



The information contained in this message is CONFIDENTIAL and is for the intended addressee only. Any unauthorized use, dissemination of the information, or copying of this message is prohibited. If you believe you have received the message in error, please contact our Client Services Department at mro@mroresultsonline.com and delete the message without copying or disclosing it.

9501 NORTHFIELD BLVD, DENVER, CO 80238 | Phone: 877-585-7366 | Fax: 855-253-5666