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MTA - LONG ISLAND RAIL ROAD
-----X

IBEW Discipline Case No. 3870-22

EMPLOYEE: DAREN DREW
-----X

93-59 183rd Street,
Building #1, Rm. 241,
Hollis, New York 11423

November 16, 2022
12:18 p.m.

1 A P P E A R A N C E S:

2
3 MTA LONG ISLAND RAIL ROAD

4 93-59 183rd Street, Building #1, Rm. 241,
5 Hollis, New York 11423

6 BY: SETH MAGGIORE, Hearing Officer,
7 MANAGER-TRIAL OFFICE, LONG ISLAND RAIL
8 ROAD, LABOR RELATIONS DEPARTMENT

9
10
11 ALSO PRESENT:

12 DAREN DREW, EMPLOYEE

13 RICARDO SANCHEZ, GENERAL CHAIRMAN FOR THE
14 ORGANIZATION, IBEW

15 WILLIAM T. LAVELLE, ESQ., LAVELLE LAW &
16 ASSOCIATES P.C., FOR EMPLOYEE DAREN DREW

17 MICHAEL COLOMBO, FINANCIAL SECRETARY FOR THE
18 ORGANIZATION, IBEW

19 SAMUEL VEYTSMAN, ASSOCIATE COUNSEL-LABOR AND
20 EMPLOYMENT, LONG ISLAND RAIL ROAD

21 CORINNE SWICICKI, CARRIER WITNESS

1 MR. MAGGIORE: Good afternoon.
2 Today is November 16, 2022. The time
3 is approximately 12:18 p.m.

4 This trial is being held at the
5 Hillside Maintenance Complex, Room 241,
6 second floor of the administration
7 office. My name is Seth Maggiore, and
8 I'll be serving as the trial officer.

9 Present at this time is the
10 charged employee, Daren Drew, along
11 with his union representative Mr.
12 Ricardo Sanchez of the IBEW. Also
13 present is Samuel Veytsman, associate
14 counsel of labor employment for the
15 carrier, and William Lavelle, counsel
16 for the IBEW. Additionally, Mike
17 Colombo for the IBEW is sitting in as an
18 observer.

19 Before we begin, I'd like to
20 establish for the record that the
21 Carrier is permitting the IBEW to have
22 legal counsel present for this trial on
23 a non-precedential basis, and have
24 agreed that the IBEW counsel nor
25 Mr. Veytsman are allowed to participate

1 in this hearing.

2 Mr. Sanchez, if you would like to
3 discuss or review anything that arises
4 during this trial with your counsel,
5 please do so by requesting a recess so
6 you can speak with the counsel off the
7 record.

8 Mr. Drew is being afforded this
9 trial in connection with the charges
10 detailed in the notice of trial for
11 case number 3870-22, which I will read
12 into the record.

13 Conduct unbecoming of an
14 employee, violation of corporate
15 alcohol and substance abuse policy,
16 Section four, prohibited conduct, D,
17 which states in part, detection of a
18 prohibited substance resulting from any
19 required toxicology test is a violation
20 of this policy. In that on June 7th,
21 2022, you reported to the Long Island
22 Railroad Medical Facility in Mineola,
23 New York, where you submitted a urine
24 specimen as a part of the
25 return-to-duty drug test.

1 On June 13, 2022, the department
2 was informed that you tested positive for
3 marijuana. You may, if you so desire,
4 be accompanied by a union credited
5 representative of the organization, to
6 represent you without expenses to the
7 Carrier -- to the Company. May produce
8 witnesses on your own behalf without
9 expenses to the Company. You and your
10 representative may cross-examine
11 witness. You'll be expected to be
12 present throughout the entire
13 proceeding. Signed by Corinne
14 Swicicki, Senior Manager, Man Power
15 Resource Management.

16 That ends the trial charge.

17 This notice of trial was sent to
18 Mr. Drew via certified and First Class
19 mail to Mr. Drew's address of record,
20 which is 219-53 Ryan Road, Laurelton,
21 New York 11413. A copy was also sent
22 to the Organization.

23 It is a one-page document
24 bearing certified mail number
25 70220410000344307616. It is dated

1 June 14, 2022. I'm now handing copies
2 to Mr. Drew and Mr. Sanchez for their
3 review.

4 Mr. Drew, did you receive this
5 notice of trial?

6 MR. DREW: Yes.

7 MR. MAGGIORE: Mr. Sanchez, has
8 your organization received a copy?

9 MR. SANCHEZ: Yes.

10 MR. MAGGIORE: I will mark and
11 enter this notice of trial date June
12 14, 2022 as Carrier Exhibit 1.

13 (Carrier Exhibit 1 was marked for
14 the record.)

15 MR. SANCHEZ: This is my copy?

16 MR. MAGGIORE: Yes.

17 Next, I have the certified mail
18 receipt, bearing the same certified
19 mail numbers, as Carrier Exhibit 1.
20 I'm providing copies of the certified
21 mail receipt to Mr. Drew and
22 Mr. Sanchez for their verification that
23 the certified numbers match.

24 If there are no objections, I
25 will mark and enter this as Carrier's

1 Exhibit 1A.

2 Any objections, Mr. Sanchez?

3 MR. SANCHEZ: I'm just looking
4 at -- there it is.

5 No.

6 MR. MAGGIORE: Mr. Drew?

7 MR. DREW: No.

8 (Carrier Exhibit 1A was marked
9 for the record.)

10 MR. MAGGIORE: Next, I have
11 United States Postal Service tracking
12 history bearing the same certified mail
13 numbers as Carrier Exhibit 1 and 1A.
14 It's a two-page document. I'm
15 providing copies to Mr. Drew and
16 Mr. Sanchez for their verification that
17 the certified mail numbers match.

18 (At this time, the witness
19 perused the aforementioned item.)

20 MR. MAGGIORE: If there are no
21 objections, I will mark and enter this
22 as Carrier Exhibit 1B.

23 Mr. Drew, do you have any
24 objections?

25 MR. DREW: No.

1 MR. MAGGIORE: Mr. Sanchez?

2 MR. SANCHEZ: No.

3 (Carrier Exhibit 1B was marked
4 for the record.)

5 MR. MAGGIORE: I note for the
6 record that the First Class mailing of
7 this notice was not returned to the
8 Carriers undelivered.

9 Next, I have a rescheduling
10 notice dated June 23, 2022, bearing
11 certified mail number
12 70220410000344309634, rescheduling the
13 trial from June 23rd, 2022 to July 26,
14 2022. This rescheduling notice was
15 delivered to Mr. Drew via certified and
16 First Class mail. A copy was also sent
17 to the Organization.

18 I'm providing copies of this
19 rescheduling notice to Mr. Drew and
20 Mr. Sanchez.

21 Mr. Drew, did you receive a copy
22 of this rescheduling notice?

23 MR. DREW: Yes.

24 MR. MAGGIORE: Mr. Sanchez, did
25 the Organization receive a copy of this

1 rescheduling notice?

2 MR. SANCHEZ: Yes.

3 MR. MAGGIORE: If there are no
4 objections, I will mark and enter this
5 as Carrier's Exhibit 2.

6 Mr. Drew, do you have any
7 objections?

8 MR. DREW: No.

9 MR. MAGGIORE: Mr. Sanchez, do
10 you have any objections?

11 MR. SANCHEZ: No.

12 (Carrier Exhibit 2 was marked for
13 the record.)

14 MR. SANCHEZ: I'm sorry, what did
15 you identify? Two. Just two?

16 MR. MAGGIORE: Next, I have a
17 certified mail receipt bearing the same
18 certified mail number as Carrier
19 Exhibit 2. I'm providing copies of the
20 certified mail receipt to Mr. Drew and
21 Mr. Sanchez for their verification that
22 the certified mail numbers match.

23 If there are no objections, I
24 will mark and enter the certified mail
25 receipt as Carrier Exhibit 2A.

1 Any objections, Mr. Drew?

2 MR. DREW: No.

3 MR. MAGGIORE: Mr. Sanchez, any
4 objections?

5 MR. SANCHEZ: No.

6 (Carrier Exhibit 2A was marked
7 for the record.)

8 MR. MAGGIORE: Next, I have the
9 United States Postal Services tracking
10 history bearing the same certified mail
11 numbers as Carrier Exhibit 2 and 2A.
12 It's a two-page document. I'll provide
13 copies to Mr. Drew and Mr. Sanchez for
14 their verification that the certified
15 numbers match.

16 If there are no objections, I
17 will mark and enter this as Carrier
18 Exhibit 2B.

19 Mr. Drew, do you have any
20 objections?

21 MR. DREW: No.

22 MR. MAGGIORE: Mr. Sanchez, do
23 you have any objections?

24 MR. SANCHEZ: No.

25 (Carrier Exhibit 2B was marked

1 for the record.)

2 MR. MAGGIORE: Next, I have a
3 rescheduling notice dated June -- I'm
4 sorry, July 26, 2022, bearing certified
5 mail numbers 70220410000344311798,
6 rescheduling the trial from July 26,
7 2022, to August 9, 2022.

8 This rescheduling notice was
9 delivered to Mr. Drew, via certified
10 and First Class mail. A copy was also
11 sent to the Organization. I'm
12 providing copies of this rescheduling
13 notice to Mr. Drew and Mr. Sanchez.

14 Mr. Drew, did you receive a copy
15 of this rescheduling notice?

16 MR. DREW: Yes.

17 MR. MAGGIORE: Mr. Sanchez, did
18 the organization receive a copy of this
19 rescheduling notice?

20 MR. SANCHEZ: Yes.

21 MR. MAGGIORE: If there are no
22 objections, I will mark and enter this
23 as Carrier's Exhibit 3.

24 Any objections, Mr. Drew?

25 MR. DREW: No.

1 MR. MAGGIORE: Mr. Sanchez, any
2 objections?

3 MR. SANCHEZ: No.

4 (Carrier Exhibit 3 was marked for
5 the record.)

6 MR. MAGGIORE: Next, I have a
7 United States Postal Service tracking
8 history bearing same certified mail
9 number as Carrier Exhibit 3. It's a
10 two-page document.

11 I'm providing copies to Mr. Drew
12 and Mr. Sanchez for their verification
13 that the certified numbers match.

14 MR. DREW: Good.

15 MR. MAGGIORE: If there are no
16 objections, I will mark and enter this
17 as Carrier Exhibit 3A.

18 Any objections, Mr. Drew?

19 MR. DREW: No.

20 MR. MAGGIORE: Any objections,
21 Mr. Sanchez?

22 MR. SANCHEZ: No.

23 (Carrier Exhibit 3A was marked
24 for the record.)

25 MR. MAGGIORE: Next, I have a

1 rescheduling notice dated November 2,
2 2022, bearing certified mail number
3 702274000344311279, rescheduling this
4 trial from July 26, 2022 to
5 November 16, 2022.

6 This rescheduling notice was
7 delivered to Mr. Drew via certified and
8 First Class mail. A copy was also sent
9 to the Organization.

10 I'm providing copies of this
11 rescheduling notice to Mr. Drew and
12 Mr. Sanchez.

13 Mr. Drew, did you receive this
14 rescheduling notice?

15 MR. DREW: Yes.

16 MR. MAGGIORE: Mr. Sanchez, did
17 you receive this rescheduling notice?

18 MR. SANCHEZ: I just have a
19 question.

20 Generally, they're sent with
21 return receipts, right?

22 MR. MAGGIORE: To the employee,
23 yes.

24 Did you receive a copy of the
25 November 2, 2022 rescheduling notice?

1 MR. SANCHEZ: I'm not certain,
2 but I guess I'll say yes.

3 MR. MAGGIORE: If there are no
4 objections, I will mark and enter this
5 as Carrier's Exhibit 4.

6 Any objections, Mr. Drew?

7 MR. DREW: No.

8 MR. MAGGIORE: Any objections,
9 Mr. Sanchez?

10 MR. SANCHEZ: No.

11 (Carrier Exhibit 4 was marked for
12 the record.)

13 MR. SANCHEZ: Can I take one
14 small recess fore a moment?

15 MR. MAGGIORE: That's fine. The
16 time is approximately 12:33 p.m., and
17 we are going to take a brief recess.

18 Off the record.

19 (At this time, a discussion was
20 held off the record.)

21 MR. MAGGIORE: The time is
22 12:40 p.m., and we are back on the
23 record.

24 Next, I have a certified mail
25 receipt bearing same certified mail

1 number as Carrier Exhibit 4.

2 I'm providing copies of the
3 certified mail receipt to Mr. Drew and
4 Mr. Sanchez for their verification that
5 the certified mail numbers match.

6 If there are no objections, I
7 will mark and enter this as Carrier's
8 Exhibit 4A.

9 Any objections, Mr. Drew?

10 MR. DREW: No.

11 MR. MAGGIORE: Any objections,
12 Mr. Sanchez?

13 MR. SANCHEZ: No.

14 (Carrier Exhibit 4A was marked
15 for the record.)

16 MR. MAGGIORE: Next, I have
17 United States Postal Service tracking
18 history bearing the same certified mail
19 numbers as Carrier Exhibit 4 and 4A.

20 It's a two-page document. I'm
21 providing copies to Mr. Drew and
22 Mr. Sanchez for their verification that
23 the certified mail numbers match.

24 If there are no objections, I
25 will mark and enter this as Carrier

1 Exhibit 4B.

2 Mr. Drew, do you have any
3 objections?

4 MR. DREW: No.

5 MR. MAGGIORE: Mr. Sanchez, any
6 objections?

7 MR. SANCHEZ: No.

8 (Carrier Exhibit 4B was marked
9 for the record.)

10 MR. MAGGIORE: I note for the
11 record that the First Class mailing of
12 this notice has not been returned to
13 the Carrier.

14 Mr. Drew, would you please
15 identify yourself for the record with
16 your name and IBM number.

17 MR. DREW: Name is Daren Drew,
18 IBM number is 50112.

19 MR. MAGGIORE: What is your
20 position with the Long Island Railroad?

21 MR. DREW: Electrician.

22 MR. MAGGIORE: How long have you
23 been an electrician?

24 MR. DREW: Twenty-four years with
25 the Railroad.

1 MR. MAGGIORE: What are your
2 duties and responsibilities as an
3 electrician.

4 MR. DREW: Repairing and
5 troubleshooting the trains. Last two,
6 three years, I've been working on the
7 AC units. Air conditioning units.

8 MR. MAGGIORE: Have you held any
9 other positions with the railroad?

10 MR. DREW: No.

11 MR. MAGGIORE: What is your
12 current work location?

13 MR. DREW: Hillside Facility.

14 MR. MAGGIORE: What are your
15 posted hours and relief days?

16 MR. DREW: 6:30 a.m. to 3:30 p.m.
17 Saturday and Sunday is my relief day.

18 MR. MAGGIORE: Before proceeding,
19 I will read you your rights during this
20 trial.

21 You are entitled to be
22 represented by a duly credited union
23 representative subject to the terms and
24 conditions of the applicable bargaining
25 agreement without cost of the Carrier.

1 Do you understand that right?

2 MR. DREW: Yes.

3 MR. MAGGIORE: Do you wish to
4 have union representation during this
5 trial?

6 MR. DREW: Yes.

7 MR. MAGGIORE: Whom do you wish
8 to represent?

9 MR. DREW: Mr. Sanchez.

10 MR. MAGGIORE: You are also
11 entitled to summon any person or
12 produce any evidence that will enable
13 you to defend yourself against the
14 charges brought against you by Carrier,
15 without a cost to the Carrier.

16 Do you understand that right?

17 MR. DREW: Yes.

18 MR. MAGGIORE: You are also
19 entitled to cross-examine any witness,
20 examine any evidence that may be
21 produced by the Carrier, or have your
22 representative do so on your behalf.

23 Do you understand that right?

24 MR. DREW: Yes.

25 MR. MAGGIORE: Mr. Drew, are you

1 ready to proceed with trial today?

2 MR. DREW: Yes.

3 MR. MAGGIORE: Mr. Sanchez, is
4 the Organization ready to proceed with
5 trial today?

6 MR. SANCHEZ: Yes.

7 MR. MAGGIORE: The time is
8 approximately 12:44 p.m. I want to
9 take a brief recess to allow the
10 Carrier's first witness to enter the
11 room.

12 Off the record.

13 (At this time, a discussion was
14 held off the record.)

15 MR. MAGGIORE: Time is 12:44 p.m.
16 We are back on the record.

17 The Union has requested to make a
18 motion.

19 MR. SANCHEZ: I'd like to make a
20 motion for a directive verdict as the
21 charge is not sustainable in light most
22 favorable to the Carrier. Marijuana is
23 not an illegal drug. Mr. Drew is not
24 under regulated service or FRA or the
25 CFR. And THC is not a proof of

1 impairment.

2 MR. MAGGIORE: Mr. Sanchez, you
3 and Mr. Drew will have an opportunity
4 to provide a defense against the
5 charges placed against you. I please
6 ask that any statements of that sort,
7 you reserve for that time.

8 The time is 12:45 p.m., and we
9 are going to go off the record for the
10 Carrier witness to enter the room.

11 (AT this time, a recess was
12 taken.)

13 MR. MAGGIORE: We are back on the
14 record. The time is now approximately
15 12:48 p.m.

16 Carrier's first witness has
17 joined us.

18 MR. SANCHEZ: I have a question
19 of clarification before we begin.

20 I assume if the Carrier's first
21 witness is being called, then you
22 denied my application for my motion?

23 MR. MAGGIORE: As I explained
24 earlier, you are going to have an
25 opportunity to provide a defense.

1 MR. SANCHEZ: So that's yes?

2 MR. MAGGIORE: I'm answering your
3 question. I mean, you asked if I'm
4 allowing your motion or denying the
5 motion?

6 MR. SANCHEZ: You're denying my
7 application.

8 MR. MAGGIORE: And I explained
9 that you are going to have the
10 opportunity to represent Mr. Drew and
11 provide a defense for him as the trial
12 proceeds.

13 As of this point, we are going to
14 introduce Carrier witnesses. The
15 Carrier witnesses will provide their
16 testimony and evidence. And after that
17 point, you will be able to provide
18 testimony in evidence to defend
19 Mr. Drew.

20 MR. SANCHEZ: Okay. So that's
21 yes?

22 MR. MAGGIORE: To what?

23 MR. SANCHEZ: You deny my
24 application, since you started with
25 your first witness.

1 MR. MAGGIORE: Yes. We are going
2 to continue with the trial.

3 MR. SANCHEZ: Okay. Thank you.

4 MR. MAGGIORE: Can you please
5 state your name and IBM number for the
6 record.

7 MS. SWICICKI: Corinne Swicicki
8 54910.

9 MR. MAGGIORE: Ms. Swicicki,
10 what's your current position at the
11 Long Island Rail Road?

12 MS. SWICICKI: Senior manager,
13 Manpower Resource Management.

14 MR. MAGGIORE: What are some of
15 your responsibilities and duties in
16 your current position?

17 MS. SWICICKI: Responsible for 24
18 hours, seven-day a week Manpower
19 office, for the maintenance of the
20 equipment department. Some of my
21 responsibilities are payroll, auditing,
22 administration of corporate
23 departmental policies and ensure
24 compliance with collective bargaining
25 agreements.

1 MR. MAGGIORE: You are called as
2 the Carrier's first witness for charges
3 facing Mr. Drew today.

4 I'm going to give you a copy of
5 the notice of trial, which is marked as
6 Carrier Exhibit 1, and ask you to
7 review it, please.

8 Mr. Drew, Mr. Sanchez, do you
9 waive reading of the charges into the
10 record again? Do you waive --

11 MR. SANCHEZ: Yeah, we'll waive.

12 MR. MAGGIORE: Ms. Swicicki, are
13 you the charging official?

14 MS. SWICICKI: Yes, I am.

15 MR. MAGGIORE: Does Mr. Drew
16 report to you?

17 MS. SWICICKI: No, he does not.

18 MR. MAGGIORE: Are you involved
19 in his supervision?

20 MS. SWICICKI: I'm in charge of
21 his time and attendance.

22 MR. MAGGIORE: Trial charges
23 state that Mr. Drew has been charged
24 with violations of corporate alcohol
25 and substance abuse policy.

1 Does the Carrier have such a
2 policy?

3 MS. SWICICKI: Yes, we do.

4 MR. MAGGIORE: Do you have copies
5 of that policy?

6 MS. SWICICKI: Yes, I do.

7 MR. MAGGIORE: Let the record
8 show that Ms. Swicicki has provided a
9 23-page document that contains three
10 attachments, attachment A, attachment B
11 and attachment C. I'm providing copies
12 of this document to Mr. Drew and
13 Mr. Sanchez.

14 If there are no objections, I'll
15 mark and enter this as Carrier
16 Exhibit 5.

17 Are there any objections,
18 Mr. Drew?

19 MR. DREW: No.

20 MR. MAGGIORE: Mr. Sanchez, do
21 you have any objections?

22 MR. SANCHEZ: No.

23 (Carrier Exhibit 5 was marked for
24 the record.)

25 MR. MAGGIORE: Ms. Swicicki, you

1 said this was what type of document?

2 I'm sorry. I apologize.

3 You said that this was the
4 alcohol and substance abuse policy,
5 correct?

6 MS. SWICICKI: Correct.

7 MR. MAGGIORE: Okay. Who does
8 the policy apply to?

9 MS. SWICICKI: To all of Long
10 Island Rail Road employees.

11 MR. MAGGIORE: Is there a rule or
12 policy which specifically states that?

13 MS. SWICICKI: Yes.

14 MR. MAGGIORE: Can you read that
15 into the record, please, and identify
16 it.

17 MS. SWICICKI: Yes. It's on page
18 17 of 23. It is number ten,
19 return-to-duty. Regulated service
20 employees, commercial drivers and
21 safety sensitive employees -- oh, I
22 apologize.

23 MR. MAGGIORE: I was asking who
24 the policy applies to.

25 MS. SWICICKI: Yes. I apologize.

1 On page one of 23, it does state the
2 MTA Long Island Rail Road employee is
3 committed to an alcohol and drug-free
4 workplace. And also, the scope -- this
5 policy applies to all Long Island
6 Railroad employees. Compliance is a
7 condition of accepting and continuing
8 Long Island Rail Road employment.

9 Nothing in this policy prohibits
10 the Long Island Rail Road from taking
11 disciplinary action, up to and
12 including dismissal, with or without
13 conducting drug and alcohol testing
14 when there's a violation of this policy
15 or a reasonable suspicion of a
16 violation of this policy.

17 MR. SANCHEZ: What page was that
18 on again?

19 MS. SWICICKI: Page one. I
20 apologize. It's under the scope.

21 MR. MAGGIORE: Ms. Swicicki, the
22 trial notice states that on June 7,
23 2022, Mr. Drew submitted a urine
24 specimen as part of a return to work
25 drug test.

1 Why was Mr. Drew subject to a
2 return to work drug test on June 7,
3 2022?

4 MS. SWICICKI: Mr. Drew was out
5 for over 30 calendar days. So he
6 needed to report to the medical
7 facility for a return-to-duty drug
8 test.

9 MR. MAGGIORE: Is there a
10 rule/policy which specifically states
11 that?

12 MS. SWICICKI: Yes. In the
13 alcohol and substance abuse policy, on
14 page seven of 23, number ten,
15 return-to-duty, regulated service
16 employees, commercial drivers and
17 safety sensitive employees who have
18 been absent from work for any reason
19 for 30 calendar days or more, will be
20 subject to drug and alcohol testing.
21 This will be performed concurrent with
22 a return-to-duty physical examination
23 when applicable. All employees who are
24 returning to work following a violation
25 of this policy that was not also a

1 violation of federal regulations will
2 be subject to drug and/or alcohol
3 testing concurrent with a
4 return-to-duty physical examination.

5 MR. MAGGIORE: Do you have any
6 documentation to show that Mr. Drew was
7 absent for 30 days or more as of
8 June 7, 2022?

9 MS. SWICICKI: Yes, I do
10 (Handing.)

11 MR. MAGGIORE: Ms. Swicicki has
12 handed me a ten-page document. I'm
13 providing copies to Mr. Drew and
14 Mr. Sanchez.

15 It notes, on the upper left-hand
16 corner, appears to be a screenshot of
17 Kronos Workforce Central.

18 If there are no objections, I
19 will mark and enter this as Carrier
20 Exhibit 6.

21 Any objections, Mr. Drew?

22 Mr. Lavelle, if you'd like to
23 speak to Mr. Drew, please ask for a
24 recess. Mr. Lavelle? Thank you.

25 MR. DREW: It's kind of difficult

1 to go through this to see every date
2 that I was out when I was trying to get
3 my cancer treatment.

4 MR. MAGGIORE: If you'd like to
5 take a recess to review, we can go off
6 the record for a moment.

7 Would you like to do that?

8 MR. SANCHEZ: Let's do that.

9 MR. MAGGIORE: The time is
10 12:57 p.m., and we are going to take a
11 brief recess.

12 (At this time, a recess was
13 taken.)

14 MR. MAGGIORE: The time is
15 approximately 1:00 p.m., and we are
16 back on the record.

17 Prior to going into recess,
18 Mr. Drew wanted to examine the document
19 provided by Ms. Swicicki. The Kronos
20 Workforce Central.

21 Have you had an opportunity to
22 review that, Mr. Drew?

23 MR. DREW: Yes.

24 MR. MAGGIORE: Do you have any
25 objections of that being entered into

1 the record?

2 MR. DREW: No.

3 MR. MAGGIORE: Mr. Sanchez, do
4 you have any objections?

5 MR. SANCHEZ: No.

6 MR. MAGGIORE: We'll mark and
7 enter this document as Carrier
8 Exhibit 6.

9 (Carrier Exhibit 6 was marked for
10 the record.)

11 MR. MAGGIORE: Ms. Swicicki, can
12 you please explain what that document
13 shows?

14 MS. SWICICKI: Yes. A screenshot
15 of our Kronos time and attendance. So
16 it shows that Mr. Drew was out sick on
17 Monday -- Monday, February 14th and all
18 the way through, for him returning on
19 June 8th.

20 MR. MAGGIORE: Ms. Swicicki,
21 according to Carrier Exhibit 1,
22 Mr. Drew underwent a return-to-duty
23 drug test on June 7, 2022.

24 Were you advised of the results
25 of Mr. Drew's June 7, 2022

1 return-to-duty test?

2 MS. SWICICKI: Yes, I was.

3 MR. MAGGIORE: How did you become
4 aware of the results?

5 MS. SWICICKI: I received an
6 e-mail from Christopher Yodice from the
7 medical department. He e-mailed to me
8 to state that his test had -- he tested
9 positive for marijuana on a
10 return-to-duty drug test conducted on
11 June 7th.

12 MR. MAGGIORE: Do you have any
13 documentation to show that?

14 MS. SWICICKI: Yes, I do
15 (handing).

16 MR. MAGGIORE: Ms. Swicicki has
17 provided me with a one-page document.
18 It's an e-mail, subject line is
19 Positive Drug Test Results.

20 I'll provide a copy to Mr. Drew
21 and Mr. Sanchez.

22 Mr. Lavelle, I please ask that
23 you let Mr. Drew review the evidence,
24 and that if you would like to discuss
25 it, please do so off the record.

1 Mr. Lavelle?

2 MR. LAVELLE: (No verbal
3 response.)

4 MR. MAGGIORE: Yes, but you are
5 reading the document that I just handed
6 Mr. Drew. And if you'd like to speak
7 with him off the record, you can do so.

8 (No response.)

9 MR. MAGGIORE: Mr. Drew, do you
10 have any objections of this being
11 entered as Carrier Exhibit 7?

12 MR. DREW: Only objection that I
13 have is that, being the person being
14 brung up on these charges, I haven't
15 received a copy or original from the
16 lab results.

17 MR. MAGGIORE: Well, Mr. Drew,
18 this is just the first witness. Other
19 witnesses will produce other evidence,
20 and I'm sure that that will be a part
21 of --

22 MR. DREW: That should have been
23 given to me from day one.

24 MR. MAGGIORE: Excuse me,
25 Mr. Lavelle, if you want to speak --

1 MR. LAVELLE: I'm not speaking,
2 counsel.

3 MR. MAGGIORE: I'm not counsel.
4 I'm the trial officer.

5 MR. LAVELLE: Okay. But I'm not
6 speaking.

7 MR. MAGGIORE: But Mr. Sanchez is
8 his representative.

9 MR. LAVELLE: Correct. And I'm
10 passing notes to Mr. Sanchez. I'm not
11 speaking. That was -- that was the
12 protocol for today. I wasn't allowed
13 to speak on the record.

14 MR. MAGGIORE: No, I said you are
15 not allowed to participate in the
16 hearing. But you are participating by
17 passing notes to Mr. Drew and to
18 Mr. Sanchez.

19 If you'd like to discuss anything
20 off the record, please do so.

21 MR. LAVELLE: I don't think it
22 really makes a lot of sense to spend
23 four hours here running in and out of
24 the room.

25 MR. MAGGIORE: Well, what makes

1 sense is the fact that Mr. Sanchez is
2 his representative, and that is who is
3 allowed to represent him during this
4 hearing.

5 You are allowed to sit in as a
6 witness that was agreed upon prior to
7 this trial.

8 MR. SANCHEZ: He's here to advise
9 me.

10 MR. MAGGIORE: And he can advise
11 you --

12 MR. SANCHEZ: I'm going to take a
13 recess.

14 MR. MAGGIORE: Okay.

15 The time is 1:04 p.m., and we are
16 going to go off the record.

17 (At this time, a recess was
18 taken.)

19 MR. MAGGIORE: The time is
20 approximately 1:08 p.m., and we are
21 back on the record.

22 Prior to going off the record,
23 Ms. Swicicki submitted an e-mail into
24 the record. The subject of the e-mail
25 was Positive Drug Test Results.

1 I was asking Mr. Drew if he
2 objected to this being entered into the
3 record.

4 MR. DREW: At that time, I said
5 that I do because I never received no
6 test results from the actual lab that
7 tested me.

8 MR. MAGGIORE: At that time?

9 MR. DREW: Yes. I should have
10 received test results. To me and my
11 family that's going through this.
12 Nobody else at this table.

13 MR. MAGGIORE: Did you request
14 test results from the Carrier at that
15 time?

16 MR. DREW: No, I haven't. I
17 inquired about it.

18 MR. MAGGIORE: To the Carrier?

19 MR. SANCHEZ: I think we are
20 talking about if he's objecting to this
21 piece of evidence. Why don't we stick
22 to that. Because if he doesn't, I
23 will.

24 It's an e-mail. It's hearsay. I
25 think Christopher Yodice is going to be

1 one of your next witnesses, so he
2 should present this into evidence.

3 Also, it assumes a fact that
4 hasn't been proven. Says, "Has tested
5 positive for marijuana," which he
6 hasn't. So I'm going to object this to
7 e-mail.

8 MR. MAGGIORE: All right. The
9 objections are noted for the record.
10 However, this was how Ms. Swicicki
11 learned of the incident, so it is
12 relevant.

13 I want to enter it into evidence
14 as Carrier Exhibit 7.

15 (Carrier Exhibit 7 was marked for
16 the record.)

17 MR. MAGGIORE: Ms. Swicicki, what
18 action did you take once you were
19 informed that Mr. Drew tested
20 positive of marijuana on June 13 --

21 MR. SANCHEZ: Objection. He
22 didn't test positive for marijuana.

23 MR. MAGGIORE: Excuse me. You
24 are going to have an opportunity to
25 cross-examine --

1 MR. SANCHEZ: Objection. He
2 didn't test positive for marijuana.

3 MR. MAGGIORE: That's your
4 position. You'll have an opportunity
5 to cross-examine the witness.

6 MR. SANCHEZ: I'll put an
7 objection. That's all. Objection. He
8 did not test positive for marijuana.

9 MR. MAGGIORE: Noted for the
10 record, but that's the subject of this
11 trial. And you'll have an opportunity
12 to present the defense for Mr. Drew.

13 Ms. Swicicki, what action did you
14 take once you were informed that Mr.
15 Drew tested positive for marijuana on
16 June 13, 2022?

17 MS. SWICICKI: I sent an
18 out-of-service notice to Mr. Drew and
19 also notified him via telephone that he
20 was being taken out of service for
21 violation of the corporate alcohol and
22 substance abuse policy.

23 MR. MAGGIORE: Do you have any
24 documentation to support that?

25 MS. SWICICKI: Yes, I do

1 (handing).

2 MR. MAGGIORE: Let the record
3 note that Ms. Swicicki has handed me
4 out-of-service notice.

5 I'm providing copies to Mr. Drew
6 and Mr. Sanchez for their review.

7 If there are no objections, I
8 will mark and enter this as Carrier
9 Exhibit 8.

10 Mr. Drew, do you have any
11 objections?

12 MR. DREW: No.

13 MR. MAGGIORE: Mr. Sanchez, do
14 you have any objections?

15 MR. SANCHEZ: No objections.

16 (Carrier Exhibit 8 was marked for
17 the record.)

18 MR. MAGGIORE: Ms. Swicicki, are
19 you aware of any other tests that were
20 performed with a urine specimen
21 provided by Mr. Drew for his
22 return-to-duty drug test on June 7,
23 2022?

24 MS. SWICICKI: Yes. The employee
25 requested a split sample, and I

1 received an e-mail from Christopher
2 Yodice that the split sample result has
3 been received and it reconfirms the
4 initial positive results.

5 MR. MAGGIORE: Do you have any
6 documentation to support that?

7 MS. SWICICKI: Yes, I do.
8 (Handing.)

9 MR. MAGGIORE: Note for the
10 record that Ms. Swicicki has handed me
11 a two-page document, which is an
12 e-mail, subject line, RE Positive Drug
13 Test Result.

14 I provided copies to Mr. Drew and
15 Mr. Sanchez for their review.

16 Mr. Drew, do you have any
17 objections for this being entered into
18 the record?

19 MR. DREW: No.

20 MR. MAGGIORE: Mr. Sanchez, do
21 you have any objections?

22 MR. SANCHEZ: No.

23 MR. MAGGIORE: I'll mark and
24 enter this as Carrier Exhibit 9.

25 (Carrier Exhibit 9 was marked for

1 the record.)

2 MR. MAGGIORE: Ms. Swicicki,
3 based on the information provided, did
4 Mr. Drew violate the corporate alcohol
5 and substance abuse policy?

6 MS. SWICICKI: Yes.

7 MR. MAGGIORE: Specifically, what
8 section of the policy did Mr. Drew
9 violate?

10 MS. SWICICKI: It is on page five
11 of the alcohol and substance abuse
12 policy, Prohibited conduct and
13 employment -- employee requirements,
14 letter D, "The detection of a
15 prohibited substance resulting from any
16 required toxicological test is a
17 violation of this policy."

18 MR. MAGGIORE: I have no further
19 questions for Ms. Swicicki.

20 Mr. Sanchez, Mr. Drew, do you
21 need time off the record to review
22 documents?

23 MR. SANCHEZ: Yes.

24 MR. MAGGIORE: Okay. The time is
25 1:14 p.m., and we are going to take a

1 brief recess.

2 (At this time, a recess was
3 taken.)

4 MR. MAGGIORE: The time is
5 1:25 p.m., and we are back on the
6 record.

7 Prior to going off the record, I
8 stated I had no further questions for
9 Ms. Swicicki.

10 Mr. Sanchez and Mr. Drew, do you
11 have any questions for Ms. Swicicki?

12 MR. SANCHEZ: Yes.

13 So I'm going to ask -- basically,
14 I have three questions I'm going to ask
15 Ms. Swicicki. And then we are going to
16 reserve the right to recall her after
17 we review all this documentation,
18 because it's too much documentation to
19 review. And I'm going to object to the
20 size of this room because it makes it
21 almost impossible to have any dialogue
22 and some privacy.

23 So I'll ask you a few questions,
24 and then we'll go off the record and
25 we'll recall you when we are ready.

1 So my first question is, as part
2 of your job scope, are you familiar
3 with the IBEW collective bargaining
4 agreement?

5 MS. SWICICKI: I am familiar with
6 it.

7 MR. SANCHEZ: And when you say
8 you are familiar, do you take any
9 guidance from labor relations, or do
10 you have the authority to interpret the
11 IBEW collective bargaining agreement?

12 MS. SWICICKI: I'm sorry, can you
13 just repeat that one more time?

14 MR. SANCHEZ: Do you have the
15 authority to make a decision based on
16 your interpretation of the IBEW
17 agreement, or do you consult with
18 someone else? Is there a higher
19 authority that you confer with?

20 MS. SWICICKI: We go by the
21 collective bargaining agreement. And
22 if we have any, you know -- we need
23 some more understanding, then we would
24 reach out to labor relations.

25 MR. SANCHEZ: Okay.

1 Ms. Swicicki, do you know if the urine
2 test that was -- the urine test that
3 was given to Mr. Drew tested for the
4 presence of cannabinoids on the day in
5 question?

6 MS. SWICICKI: I -- I cannot -- I
7 do not know that answer.

8 MR. SANCHEZ: And on the day that
9 Mr. Daren Drew's test results came back
10 and you were contacted by medical, and
11 I believe you said that he tested
12 positive, did anybody send an e-mail or
13 message to say that on the day he took
14 the test, he seemed impaired or there
15 was anything wrong with him?

16 MS. SWICICKI: No.

17 MR. SANCHEZ: And from the day he
18 took the test and returned back to
19 service, were there any complaints or
20 did anybody bring any concerns to your
21 attention about Mr. Drew looking
22 impaired or being impaired or acting
23 odd on the job? Anything that would
24 cause someone to think he was under the
25 influence?

1 MS. SWICICKI: No, I did not
2 receive any e-mails.

3 MR. SANCHEZ: Do you know, after
4 he took the test -- I believe it was in
5 June, June 13th, I believe was the
6 urine analysis -- was he returned to
7 duty the very next day? Do you know
8 when he was returned to duty?

9 MS. SWICICKI: So he took the
10 test on June 7th. And the results did
11 not come in until June 13th.

12 MR. SANCHEZ: So when he took --
13 went to medical, a return-to-work
14 physical, he took the physical portion
15 of the test.

16 MS. SWICICKI: Yes.

17 MR. SANCHEZ: And he passed the
18 physical portion of the test. Is there
19 any documentation that he gets to -- I
20 guess it goes to Manpower. Is there a
21 form that he's given to say that he's
22 passed physical testing and returned
23 back to duty?

24 MS. SWICICKI: We just receive
25 that he's able to return to work, and

1 we do not receive the drug test results
2 then because it does take a few days.
3 But we did receive that he's able to
4 return to work the next day. He did
5 return on June 8th.

6 MR. SANCHEZ: So he was cleared
7 for medical to return to duty the very
8 next day?

9 MS. SWICICKI: Correct.

10 MR. SANCHEZ: And he did come
11 back on the 8th?

12 MS. SWICICKI: Correct.

13 MR. SANCHEZ: And there's
14 documentation to that effect?

15 MS. SWICICKI: It's in -- an ASF
16 from medical department that they use
17 according to put in that information
18 that he's clear to return.

19 MR. SANCHEZ: Okay. I have no
20 further question. I reserve the right
21 to call Ms. Swicicki back after we get
22 a chance to review all these documents.

23 MR. MAGGIORE: Thank you,
24 Ms. Swicicki. You are excused and
25 subject to recall, if needed. Please

1 do not discuss this matter with anybody
2 outside of this room while the trial is
3 still pending.

4 The time is approximately
5 1:30 p.m. We are going to take a brief
6 recess to allow the Carrier's second
7 witness to enter the room.

8 (At this time, a recess was
9 taken.)

10 MR. MAGGIORE: We are going back
11 on record. The time is approximately
12 1:36 p.m.

13 We've been joined by the
14 Carrier's second witness.

15 Please state your name and IBM
16 number for the record.

17 MR. YODICE: My name is Chris
18 Yodice. My IBM is 51656.

19 MR. MAGGIORE: What is your
20 current position with the Railroad?

21 MR. YODICE: My title is
22 Assistant Director of Employee
23 Services.

24 MR. MAGGIORE: What are some of
25 your duties and responsibilities at

1 your current position?

2 MR. YODICE: I oversee the
3 general running of the Railroad's
4 medical department, includes case
5 management and reasonable
6 accommodations and those sort of
7 things. And I'm also the designated
8 employee representative for drug and
9 alcohol testing. So I oversee the drug
10 and alcohol testing programs as well.

11 MR. MAGGIORE: How many years of
12 service do you have with the Railroad?

13 MR. YODICE: Years of service,
14 21.

15 MR. MAGGIORE: You've been called
16 here as a Carrier witness in regard to
17 the charges stated in the notice
18 against Mr. Drew, which has been marked
19 and entered as Carrier Exhibit 1.

20 I'm going to show them to you and
21 ask if you've reviewed them.

22 Mr. Drew, Mr. Sanchez, do you
23 read or waive -- sorry --

24 MR. SANCHEZ: Yes.

25 MR. MAGGIORE: -- waive the

1 reading of the charge notice?

2 MR. SANCHEZ: Yes.

3 MR. MAGGIORE: Mr. Drew?

4 MR. DREW: (A nonverbal response
5 was given.)

6 MR. MAGGIORE: Okay.

7 Mr. Yodice, are you familiar with
8 Mr. Drew?

9 MR. YODICE: Through this, yes.

10 MR. MAGGIORE: Does he report to
11 you?

12 MR. YODICE: No.

13 MR. MAGGIORE: Were you involved
14 in his supervision?

15 MR. YODICE: No.

16 MR. MAGGIORE: The trial charge
17 speaks to a return-to-duty drug test;
18 can you please explain the process of
19 that test.

20 MR. YODICE: The process for the
21 testing itself?

22 MR. MAGGIORE: Yes.

23 MR. YODICE: So when someone
24 reports to the medical?

25 MR. MAGGIORE: Yes.

1 MR. YODICE: An employee will
2 report to medical for the drug test.
3 So just as a qualifier, I'm not a
4 certified collector. This is very
5 broad based what happens in the drug
6 testing.

7 Employee is called in by the
8 collector. Employee is asked to select
9 a container or urine specimen
10 container. The collector goes through
11 the custody control form with the
12 employee, that they fill out when
13 applicable. The employee picks the
14 cup, the cup is broken into -- really
15 there are pieces of it. There's one
16 urine specimen container that the
17 employee urinates into.

18 When the employee is done, they
19 use the DOT bathroom. When they're
20 done with that, they bring the specimen
21 out. It's split into two samples in
22 two separate tubes. There's a primary
23 specimen and split specimen. The
24 employee watches as the collector
25 splits it into two. Collector seals

1 both specimens.

2 I believe the employee initials
3 just to make sure they label it with a
4 sticker from the custody control form.
5 I believe the employee initials both.
6 And the specimens are sealed then for
7 sending.

8 MR. MAGGIORE: With respect to
9 the return-to-duty drug test referenced
10 in the trial charge, the June 7, 2022
11 test, did you receive any documentation
12 regarding the results of that test?

13 MR. YODICE: I did.

14 MR. MAGGIORE: Do you have copies
15 of -- do you have any documentation to
16 submit regarding that?

17 MR. YODICE: I do. I have a copy
18 of the custody control form.

19 MR. MAGGIORE: All right. Let
20 the record note that Mr. Yodice handed
21 me a one-page document. Top, it says
22 forensic drug testing custody and -- I
23 believe control form. It's cut off. I
24 think that's what it says. On the
25 upper right-hand corner, it has Quest

1 Diagnostics logo.

2 I provided a copy to Mr. Drew and
3 Mr. Sanchez for their review.

4 If there are no objections, I
5 will mark and enter this as Carrier
6 Exhibit 10.

7 Mr. Drew, do you have any
8 objections?

9 MR. DREW: No.

10 MR. MAGGIORE: Mr. Sanchez, do
11 you have any objections?

12 MR. SANCHEZ: Only that under, I
13 guess, A, which says drug test to be
14 performed, it says THC, CFC, PCP, and
15 OIAMP, there's no box checked. It just
16 says reason for test, it says return to
17 duty. But it doesn't say the test to
18 be performed. I don't know if that
19 should be checked off or --

20 That's all.

21 MR. MAGGIORE: Okay. I note your
22 objection for the record. However,
23 this is marked as a return-to-duty drug
24 test.

25 I'm showing that issue that you

1 brought up to Mr. Yodice, that it's not
2 checked off.

3 I will mark and enter this as
4 Carrier Exhibit 10.

5 (Carrier Exhibit 10 was marked
6 for the record.)

7 MR. MAGGIORE: Mr. Yodice, can
8 you please explain what the document
9 is, the form you submitted?

10 MR. YODICE: Sure.

11 Custody control form is a
12 document that pretty much essentially
13 documents the steps in the urine
14 collection process. So it's initiated
15 by the collector, who writes in the
16 donor's identification, BSC numbers
17 used here. And it goes step by step.
18 Essentially, it goes step by step to
19 indicate who handled the specimen, who
20 provided the specimen and the specimen
21 was checked off and in the custody of
22 the employee and then the collector.

23 MR. MAGGIORE: All right.

24 MR. SANCHEZ: I'm going to
25 object. Is the collector -- the

1 collector an employee of the MTA?

2 MR. YODICE: Yes.

3 MR. SANCHEZ: I don't know if
4 it's -- but the collector is
5 responsible for this chain of custody?

6 MR. YODICE: Correct.

7 MR. SANCHEZ: So I object to
8 Mr. Yodice speaking for the collector
9 when we can get the --

10 MR. MAGGIORE: Mr. Sanchez --

11 MR. SANCHEZ: -- collector and
12 talk to him as the chain of custody.

13 MR. MAGGIORE: Well, as I stated,
14 you are going to have an opportunity to
15 cross-examine Mr. Yodice regarding --

16 MR. SANCHEZ: I'm just -- I'm
17 objecting.

18 MR. MAGGIORE: Understood. I
19 note your objection for the record.
20 However, again, you'll have the
21 opportunity to cross-examine him.
22 Also, Mr. Yodice introduced this in
23 order to explain the process, not to
24 say that he himself participated. He's
25 explaining the process.

1 MR. SANCHEZ: As he believes the
2 process. He doesn't -- he's not a
3 collector. It's not his job. So he
4 may be wrong. It's possible. So I'd
5 rather have the collector who actually
6 collected the specimen and is -- and
7 was responsible for chain of custody to
8 testify to the chain of custody.
9 That's all I'm saying.

10 MR. MAGGIORE: Understood. Like
11 I said, your objection is noted for the
12 record. However, he was just
13 explaining the process, and this is the
14 document he's using to explain that.

15 So Mr. Yodice, who is subject to
16 this test?

17 MR. YODICE: Mr. Drew.

18 MR. MAGGIORE: Can you explain
19 where in the document that's
20 identified?

21 MR. YODICE: Sure.

22 It's in step five, completed by
23 donor. The initial identification is
24 up top in step one. And that, as far
25 as I'm -- as far as I know, is the

1 employee's BSC number. It was showing
2 that it was Mr. Drew who provided the
3 specimen. It's his signature in step
4 five.

5 MR. MAGGIORE: What day was this
6 test performed?

7 MR. YODICE: It was on June 7,
8 2022.

9 MR. MAGGIORE: Where is that
10 indicated?

11 MR. YODICE: That's indicated in
12 two spots. The collector noted it in
13 step four and the employee noted it in
14 step five.

15 MR. MAGGIORE: What were the
16 results of the test?

17 MR. YODICE: The results of the
18 test were positive for marijuana.

19 MR. MAGGIORE: Where is that
20 identified?

21 MR. YODICE: That is in step six,
22 where it's marked off by the MRO, the
23 medical review officer, as positive for
24 marijuana metabolite.

25 MR. MAGGIORE: Was any other test

1 performed in connection with this --
2 with this positive?

3 MR. YODICE: Yes.

4 The employee, upon being notified
5 of the positive result, requested that
6 the split sample be tested. The
7 results of the split sample test are
8 noted in step seven, where it notes
9 reconfirmed for marijuana.

10 MR. MAGGIORE: I don't have
11 further questions for Mr. Yodice.

12 Mr. Sanchez, Mr. Drew, do you
13 need a moment to review the
14 documentation submitted?

15 MR. SANCHEZ: Yes.

16 MR. MAGGIORE: The time is
17 1:45 p.m., and we are going to take a
18 brief recess.

19 (At this time, a recess was
20 taken.)

21 MR. MAGGIORE: The time is
22 1:52 p.m., and we are back on the
23 record.

24 Before we took a recess, I asked
25 Mr. Sanchez and Mr. Drew if they have

1 any questions for Mr. Yodice.

2 Do you have any questions --

3 MR. SANCHEZ: Yes.

4 MR. MAGGIORE: -- for Mr. Yodice?

5 MR. SANCHEZ: So referring to, I
6 guess, Carrier Exhibit 10. So on the
7 top, I can't make out exactly what it
8 says. Looks like it says forensic drug
9 testing -- I'm not sure what that says.
10 Can you tell me if this drug test is a
11 federal drug test?

12 MR. YODICE: It is not.

13 MR. SANCHEZ: So when this drug
14 test -- is it a requirement, a federal
15 requirement to do this drug test?

16 MR. YODICE: It is not.

17 MR. SANCHEZ: Under what
18 authority is the test given?

19 MR. YODICE: Under Long Island
20 Rail Road's authority.

21 MR. SANCHEZ: So it's company
22 policy?

23 MR. YODICE: Correct.

24 MR. SANCHEZ: Is there anywhere
25 on this form or any notes that indicate

1 why Mr. Drew was out of DS?

2 MR. YODICE: No.

3 MR. SANCHEZ: Do you know if they
4 test, during the return-to-work
5 physical, do they test for nicotine?

6 MR. YODICE: To my knowledge,
7 they do not test for nicotine.

8 MR. SANCHEZ: Do you know if they
9 test for alcohol?

10 MR. YODICE: For return-to-duty,
11 they do not test for alcohol.

12 MR. SANCHEZ: But the policy is a
13 drug and alcohol test?

14 MR. YODICE: I would have to see
15 the policy.

16 MR. SANCHEZ: Are you familiar
17 with the policy? You've held the
18 position for, I believe you said
19 nine years. So it's -- what is that --
20 let me -- policy -- it's Carrier five.
21 I think it's ME5 -- ME005.

22 MR. MAGGIORE: I'm handing
23 Mr. Yodice a copy of Carrier Exhibit 5,
24 which is the alcohol substance abuse
25 policy.

1 I handed it to him.

2 MR. SANCHEZ: So it's an alcohol
3 and substance abuse policy. So on a
4 return-to-work physical, does the
5 Carrier test for both alcohol and
6 drugs?

7 MR. YODICE: No. For drugs only.

8 MR. SANCHEZ: And why doesn't the
9 Carrier test for alcohol?

10 MR. YODICE: The way the policy
11 reads is, the Carrier can test for
12 drugs and/or alcohol. And since my
13 time here, we've only tested for drugs.

14 MR. SANCHEZ: Is there any reason
15 why they don't test for alcohol, that
16 you are aware?

17 MR. YODICE: That I'm aware of,
18 no.

19 MR. SANCHEZ: And when you say in
20 your time here, I don't want to put
21 words in your mouth, I believe you've
22 been in your position for nine years.

23 MR. YODICE: Correct.

24 MR. SANCHEZ: So nine years as
25 the liaison for medical?

1 MR. YODICE: Correct.

2 MR. SANCHEZ: So in the nine
3 years of liaison for medical, have you
4 ever witnessed or been aware of the
5 Carrier giving an alcohol test during a
6 return-to-work physical?

7 MR. YODICE: No. But I will
8 qualify that.

9 If an employee is coming back
10 from a drug and/or alcohol positive,
11 it's a different sort of test.

12 MR. SANCHEZ: That's a different
13 sort of test?

14 MR. YODICE: Correct.

15 MR. SANCHEZ: And that different
16 type of test, is that a federal
17 requirement?

18 MR. YODICE: That's a federal
19 requirement.

20 MR. SANCHEZ: But --

21 MR. YODICE: But it's also
22 company requirement.

23 MR. SANCHEZ: Okay. So in
24 Mr. Drew's case, a return-to-work
25 physical, the company only tests for

1 drugs?

2 MR. YODICE: That's correct.

3 MR. SANCHEZ: And not alcohol?

4 MR. YODICE: Correct.

5 MR. SANCHEZ: Mr. Drew, at the
6 time that he took his test, is he
7 considered in service?

8 MR. YODICE: Departments usually
9 phrase differently. To my knowledge,
10 he was DS. He was out sick.

11 MR. SANCHEZ: Yes.

12 MR. YODICE: So he was not in
13 service. He was not on the clock.

14 MR. SANCHEZ: So as liaison for
15 medical, and stop me if I'm wrong, so
16 Mr. Drew comes back after an absence
17 and there's a requirement, company
18 policy, that says you have to come back
19 for a return-to-work physical, which
20 includes a drug test.

21 So he passes -- we can assume he
22 passed the return-to-work physical and
23 we are waiting on the results of his
24 drug test?

25 MR. YODICE: Correct. I would

1 need to see the document, but to my
2 knowledge --

3 MR. SANCHEZ: So typically,
4 that's how it goes?

5 MR. YODICE: Yeah. Typically, he
6 goes through the -- the return-to-work
7 medical process, if you will. Takes
8 the physical test that's applicable.
9 He receives one of the clinicians who
10 checks him medically. And then the
11 drug test usually the last piece of it.

12 MR. SANCHEZ: So in this case,
13 Mr. Drew -- was it applicable for Mr.
14 Drew to see the doctor?

15 MR. YODICE: Doctor or one of the
16 clinicians.

17 MR. SANCHEZ: Sorry. So he saw
18 somebody, a doctor or a clinician.

19 And if he saw a clinician, was
20 that clinician working under the MRO's
21 authority?

22 MR. YODICE: Two different -- if
23 he saw one of the physician's
24 assistants, they work under the
25 doctor's authority. The MRO

1 designation comes in only for a drug
2 test. Otherwise, doctors refer to
3 assistant medical director.

4 MR. SANCHEZ: And on his return
5 for a physical, did he actually do a
6 physical portion of the test?

7 MR. YODICE: It depends on his
8 length of time and reason he was out.

9 MR. SANCHEZ: In this particular
10 case, are you familiar why the length
11 of time -- obviously, over 30 days, and
12 you are familiar with the reason he was
13 out?

14 MR. YODICE: Medically, no.

15 MR. SANCHEZ: Do you know if he
16 took a physical?

17 MR. YODICE: I don't.

18 MR. SANCHEZ: Do you know who
19 would know if he took a physical.

20 MR. YODICE: I can find out. I
21 would know. But if I could ask, if he
22 was out more than 60 days, he would
23 have taken a physical. That's one of
24 the requirements.

25 MR. SANCHEZ: So he was out for

1 more than 60 days. So he comes back
2 and it's company policy to take a
3 return-to-work physical. And have a
4 physical with the MRO or a physician's
5 assistant?

6 MR. YODICE: Someone medical.
7 Right. A medical clinician to see him
8 for appearance.

9 MR. SANCHEZ: So when he took his
10 physical, that was under the
11 supervision of a physical therapist
12 or --

13 MR. YODICE: Correct.

14 MR. SANCHEZ: So we have someone
15 that witnessed Mr. Drew take a
16 return-to-work physical?

17 MR. YODICE: My assumption is
18 yes. I would need to look at documents
19 to see.

20 MR. SANCHEZ: And if Mr. Drew
21 didn't pass the test, the physical
22 portion of the test, would you have
23 been made aware at that moment before
24 he left?

25 MR. YODICE: Me, not necessarily.

1 MR. SANCHEZ: Would you have been
2 made aware at all?

3 MR. YODICE: I would have
4 received -- actually I wouldn't have
5 received the --

6 So if he didn't pass the
7 physical, the physical ability
8 screening, he wouldn't have been
9 cleared to return to work. I wouldn't
10 receive a document on that necessarily.
11 Someone might mention to me in passing,
12 hey, this person did not pass and was
13 not returned. But not necessarily.

14 MR. SANCHEZ: So who ultimately
15 makes the decision if he's passed, if
16 he's cleared to return to work?

17 MR. YODICE: Ultimately, I would
18 say the assistant medical director or
19 one of the physician's assistants.

20 MR. SANCHEZ: Okay. And -- and
21 they're trained, I would guess, they're
22 trained in identifying troubled
23 employees? So they would know if
24 Mr. Drew was exhibiting symptoms or
25 signs of someone being impaired?

1 MR. YODICE: I can't speak to
2 that.

3 MR. SANCHEZ: But that's part of
4 their medical training?

5 MR. YODICE: I couldn't say.

6 MR. SANCHEZ: So I can go in
7 medical and they tell me that you don't
8 know --

9 MR. YODICE: No.

10 MR. SANCHEZ: Do you have any
11 medical training?

12 MR. YODICE: I do not.

13 MR. SANCHEZ: Do you know if
14 there's a list, if the Carrier has a
15 list or if the MRO has a list of drugs
16 that can cause a false positive?

17 MR. YODICE: I don't know if he
18 has a list, no.

19 MR. SANCHEZ: In your nine years
20 as -- as the liaison medical, are you
21 aware of any employee on the Long
22 Island Rail Road ever coming up with a
23 false positive?

24 MR. YODICE: That I know of, no.
25 We do many tests. But nothing jumps

1 out.

2 MR. SANCHEZ: You don't have to
3 be specific, but a ballpark. How many
4 tests, return-to-work, physical or just
5 drug and alcohol tests do you think the
6 Carrier conducts on a monthly basis?

7 MR. YODICE: Ballpark, right?

8 MR. SANCHEZ: Just ballpark.

9 MR. YODICE: Ballpark, even if I
10 were just looking at randoms, randoms
11 are the bulk of the tests.

12 MR. SANCHEZ: Yeah. So hundreds?
13 Thousands?

14 MR. YODICE: Per month, I would
15 say -- I'm going to guess.

16 MR. SANCHEZ: That's fine.

17 MR. YODICE: 200 or so.

18 MR. SANCHEZ: 200 or so.
19 Basically, that's randoms. And then
20 you throw in medical --

21 MR. YODICE: Yeah.

22 MR. SANCHEZ: Suspicion. Do you
23 know, and once again, I'm not holding
24 you to it, suspicion tests, how many of
25 those do you think?

1 MR. YODICE: Very few.

2 MR. SANCHEZ: Less than?

3 MR. YODICE: Per month -- not one
4 per month.

5 MR. SANCHEZ: So it's rare. So
6 most people who go to medical are
7 either a return-to-work physical or
8 randoms?

9 MR. YODICE: People who were
10 tested are either return-to-work or
11 randoms. That's probably fair.
12 Preemployment.

13 MR. SANCHEZ: In your time, your
14 nine years as the liaison, if somebody
15 tests positive, you are notified?

16 MR. YODICE: Correct.

17 MR. SANCHEZ: And is there a
18 provision in the way medical conducts
19 the tests where an employee is
20 contacted so they can say, "You tested
21 positive, is there any reason why"?

22 MR. YODICE: Yes.

23 MR. SANCHEZ: And in your time,
24 in your position, has anybody ever
25 tested positive, that you are aware of,

1 that was contacted and submitted
2 documentation as proof where the --
3 where the positive was justified as a
4 false positive?

5 MR. YODICE: I've never heard of
6 a false positive. The MRO interview
7 happens, and that's when the MRO
8 reaches out to the employee. There are
9 positives that are downgraded to
10 negatives.

11 MR. SANCHEZ: Yes.

12 MR. YODICE: Never -- again to,
13 my knowledge -- because it was a false
14 positive, but because someone came up
15 on a medication that we test for. You
16 know, amphetamine, if you will. And
17 the employee said I'm on this
18 medication. So this happens before I'm
19 even notified, in the hands of the MRO.

20 The MRO calls the employee, the
21 employee says -- MRO says, any reason
22 you would have come up positive for
23 this? Employee says yes, as a matter
24 of fact, I'm on this prescription. The
25 MRO requests documentation of that

1 prescription. And if he feels it's
2 valid, downgrades it to a negative.
3 Those never come to me.

4 MR. SANCHEZ: So downgraded.
5 That's the term I was looking for.

6 So if someone is downgraded, you
7 would know?

8 MR. YODICE: No.

9 MR. SANCHEZ: If somebody comes
10 up positive -- or somebody comes up
11 positive, and we'll use Mr. Drew as an
12 example. And he took the test seven
13 days later, it came up. You were
14 contacted. Now, there's a whole
15 process that goes forward. You're
16 contacted, the company, the
17 department --

18 Now, if -- if the MRO -- and he's
19 required, am I correct, is he required
20 to make that contact with the employee?

21 MR. YODICE: I believe so, yes.

22 MR. SANCHEZ: And if the employee
23 submits documentation, right, from his
24 doctor or treating physician, does the
25 MRO have the authority to use his

1 judgment or is he required to contact
2 the treating physician and -- and
3 verify any -- any documented
4 medication?

5 MR. YODICE: Better question for
6 the MRO.

7 MR. SANCHEZ: Okay. So you are
8 not aware.

9 Okay. I have no further
10 questions.

11 MR. MAGGIORE: Mr. Drew, do you
12 have any questions for Mr. Yodice?

13 MR. DREW: (No verbal response
14 given.)

15 MR. MAGGIORE: Do you need to
16 take a recess?

17 MR. SANCHEZ: Yeah, we need a
18 recess.

19 MR. MAGGIORE: The time is 2:02
20 p.m. We are going to take a recess.

21 (At this time, a recess was
22 taken.)

23 MR. MAGGIORE: The time is
24 approximately 2:09 p.m. We are back on
25 the record.

1 Mr. Sanchez and Mr. Drew, do you
2 have anymore questions for Mr. Yodice?

3 MR. SANCHEZ: Yes. Two or three
4 more.

5 Mr. Yodice, do you know if
6 there's any documentation prepared by
7 the MRO that indicates he had a
8 discussion with Mr. Drew upon the
9 positive finding?

10 MR. YODICE: There should be.

11 MR. SANCHEZ: And do you know if
12 they're -- do you know if he's required
13 to keep documentation of those
14 discussions?

15 MR. YODICE: I believe the
16 regulation says yes.

17 MR. SANCHEZ: When you say
18 regulation, is this a federal
19 requirement?

20 MR. YODICE: Actually, that's a
21 good point, but I'm always thinking in
22 those terms. So if it were a federal
23 test, then yes. But being it's a
24 company test, then no.

25 We generally apply the same

1 procedures to both. But it's a good
2 point on your part. This test isn't
3 bound by federal regulation. Like I
4 said, I always default to, hey, we do
5 it for everything. But you are
6 absolutely right. There's no federal
7 requirement for that documentation
8 because this test is not a federal
9 test.

10 Do I believe the document exists?
11 Probably.

12 MR. SANCHEZ: So what you are
13 saying is, it's -- the -- the MRO is
14 not required to contact Mr. Drew upon a
15 positive finding because it's a company
16 policy. Had it been a -- a return -- a
17 random FRA CFR requirement, he would
18 have been required to do it?

19 MR. YODICE: Yes. With a
20 qualifier.

21 I can't speak to what his
22 procedures are from OHS, Occupation
23 Health Services. He may be required by
24 them, in writing somewhere, that he
25 needs to do this just as he needs to do

1 it for a federal test.

2 MR. SANCHEZ: Do you know if
3 company policy requires him to do that?

4 MR. YODICE: I'm only familiar
5 with the Long Island Rail Road's
6 policy, and Long Island Railroad policy
7 does not.

8 MR. SANCHEZ: So the Railroad
9 policy is, if it's a required test, a
10 CFR DOT FRA, there's a requirement that
11 you have to fulfill. But from
12 Mr. Drew, there's no policy?

13 MR. YODICE: Yes, but the
14 Railroad policy doesn't say he needs to
15 do a federal test. But that's simply
16 where the regulation supersedes the
17 policy.

18 MR. SANCHEZ: But he's required
19 to do it not because the Railroad
20 requires him, but because the federal
21 government requires him?

22 MR. YODICE: Correct.

23 MR. SANCHEZ: But in Mr. Drew's
24 case. There's no requirement
25 whatsoever?

1 MR. YODICE: To my knowledge, no.

2 MR. SANCHEZ: But Mr. Drew was
3 taken out of service for THC test. And
4 do you know if that was the only reason
5 he was taken out of service?

6 MR. YODICE: I believe so, yes,
7 the positive marijuana results.

8 MR. SANCHEZ: It wasn't a
9 positive marijuana result. It was a
10 positive test for metabolite.

11 And do you know if a positive
12 test for metabolites indicates that you
13 are impaired?

14 MR. YODICE: I do not know.

15 MR. SANCHEZ: And you didn't see
16 Mr. Drew that whole day?

17 MR. YODICE: No.

18 MR. SANCHEZ: Does the company
19 have a list of drugs that may cause a
20 false positive?

21 MR. YODICE: No.

22 MR. SANCHEZ: I have no further
23 questions for this witness.

24 MR. MAGGIORE: Okay. I just have
25 one question for Mr. Yodice.

1 Are you notified of results of
2 all drug tests or just positives?

3 MR. YODICE: Just positives.

4 MR. MAGGIORE: Thank you.

5 So Mr. Yodice, you are excused
6 and subject to recall, if needed.
7 Please do not discuss this matter with
8 anybody outside of this room while this
9 trial is pending.

10 MR. YODICE: Great. Thank you.

11 MR. MAGGIORE: Since the Carrier
12 third witness for this trial
13 wasn't available today, we are going
14 to place this trial in recess. The
15 Organization and Mr. Drew will be sent
16 notice regarding the date, time and
17 location for continuation.

18 The time is 2:13 p.m., and we are
19 going off record.

20 * * * *

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I N D E X

EMPLOYEE: DAREN DREW

CARRIER EXHIBITS MARKED

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C E R T I F I C A T E

STATE OF NEW YORK)

:SS

COUNTY OF NASSAU)

I, Elbia Brumit, a Notary Public
within and for the State of New York, do hereby
certify:

I reported the proceedings in the
within-entitled matter, and that the within
transcript is a true record of such proceedings
to the best of my ability.

I further certify that I am not
related to any of the parties to this action by
blood or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 16th day of November, 2022.


ELBIA BRUMIT