

In Re Employee Trial IBEW Discipline Case No. 3870-22 (Darren  
Drew)

March 8, 2023

1 MTA - LONG ISLAND RAIL ROAD

2 -----X

3 IBEW Discipline Case No. 3870-22

4

5 EMPLOYEE: DARREN DREW

6 -----X

7

8 300 Old Country Road,  
9 Suite GL-71  
Mineola, New York 11501

10

March 08, 2023  
09:53 A.M.

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LH REPORTING SERVICE, INC.  
Computer-Aided Transcription  
220 Old Country Road, Suite 202  
Mineola, New York 11501

25

March 8, 2023

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

2

3 MTA LONG ISLAND RAIL ROAD  
4 300 Old Country Road  
5 Mineola, New York 11501

6 BY: SETH MAGGIORE  
7 HEARING OFFICER, MANAGER-TRIAL OFFICE,  
8 LONG ISLAND RAIL ROAD, LABOR RELATIONS  
9 DEPARTMENT

10

11

ALSO PRESENT:

12

MICHAEL COLOMBO, IBEW FINANCIAL SECRETARY

13

RICARDO SANCHEZ, IBEW GENERAL CHAIRMAN

14

CHRISTOPHER YODICE, ASSISTANT DIRECTOR  
LIRR EMPLOYEE SERVICES

15

DR. MOHAMMED MUJTABA, LIRR PHYSICIAN

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March 8, 2023

1 MR. MAGGIORE: Good morning. Today  
2 is March 8, 2023. The time is  
3 approximately 9:54 a.m.

4 This trial is being held at the Long  
5 Island Rail Road Medical Facility  
6 located at 300 Old Country Road,  
7 Mineola, New York.

8 My name is Seth Maggioro, I am the  
9 Manager of the Trial Office. I will be  
10 serving as the Trial Officer.

11 Present at this time is the charged  
12 employee, Darren Drew, along with his  
13 union representative, Mr. Ricardo  
14 Sanchez of the IBEW. Also present as an  
15 observer is Mike Colombo, Financial  
16 Secretary of the IBEW.

17 Mr. Drew, you are being afforded  
18 this trial in connection with the  
19 charges outlined in the Notice of Trial  
20 that has been marked into evidence as  
21 Carrier Exhibit 1.

22 Mr. Drew, do you waive a reading of  
23 the Notice of Trial?

24 MR. DREW: Yes.

25 MR. MAGGIORE: Mr. Sanchez, does the

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1 Organization waive a reading of the  
2 Notice of Trial?

3 MR. SANCHEZ: Yes.

4 MR. MAGGIORE: After this trial was  
5 put in recess on February 7, 2023, a  
6 Trial Continuation Notice was sent to  
7 Mr. Drew by Certified and First Class  
8 Mail to 219-53 Ryan Road, Laurelton, New  
9 York 11413.

10 A copy was also sent to the  
11 Organization. It is a one-page document  
12 bearing Certified Mail number  
13 70220410000344311637. It is dated  
14 February 15, 2023.

15 I am now handing copies to  
16 Mr. Sanchez and Mr. Drew for their  
17 review (handing).

18 Mr. Drew, did you receive a copy of  
19 this Trial Continuation Notice?

20 MR. DREW: Yes.

21 MR. MAGGIORE: Mr. Sanchez, did the  
22 Organization receive this Trial  
23 Continuation Notice?

24 MR. SANCHEZ: Yes.

25 MR. MAGGIORE: If there are no

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1 objections, I will mark this Trial  
2 Continuation Notice as Carrier  
3 Exhibit 20. Any objections?

4 MR. SANCHEZ: No.

5 MR. DREW: No.

6 (Whereupon, Trial Continuation  
7 Notice dated 02/15/2023 was marked as  
8 Carrier Exhibit 20 for identification as  
9 of this date.)

10 MR. MAGGIORE: Next, I have the  
11 United States Postal Service Tracking  
12 History bearing the same Certified Mail  
13 number as Carrier Exhibit 20.

14 I am showing copies of this to  
15 Mr. Drew and Mr. Sanchez for their  
16 verification that the Certified Mail  
17 numbers match (handing).

18 Do they match?

19 MR. DREW: Yes.

20 MR. SANCHEZ: Yes.

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

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

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1 MR. DREW: No.

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

4 MR. SANCHEZ: No.

5 MR. MAGGIORE: I note for the record  
6 that it is a two-page document. I also  
7 note for the record that the First Class  
8 Mailing of Carrier Exhibit 20 has not  
9 been returned to the Carrier as  
10 undelivered.

11 (Whereupon, United States Postal  
12 Service Tracking History Certified Mail  
13 Number 70220410000344311637 was marked  
14 as Carrier Exhibit 20A for  
15 identification as of this date.)

16 MR. MAGGIORE: Mr. Drew, would you  
17 please identify yourself for the record  
18 with your full name and IBM number?

19 MR. DREW: My name is Darren Drew.  
20 My employee number is 50112.

21 MR. MAGGIORE: Mr. Drew, before  
22 continuing, I will remind you of your  
23 rights for this trial.

24 You are entitled to be represented  
25 by a dually-accredited Union

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1 representative, subject to the terms and  
2 conditions of your applicable agreement  
3 without cost to the Carrier.

4 Do you understand that right?

5 MR. DREW: Yes.

6 MR. MAGGIORE: Whom would you like  
7 to represent you?

8 MR. DREW: To clarify for the record  
9 today, as the IBEW represents me, I  
10 would like to state that both Ricardo  
11 Sanchez and Mike Colombo are my  
12 designated representatives.

13 MR. MAGGIORE: You only get one  
14 representative, as per your collective  
15 bargaining agreement, and Mr. Sanchez  
16 has been your representative for the  
17 first two days of this trial.

18 So, you need to pick a  
19 representative for this trial.

20 MR. DREW: Mr. Ricardo Sanchez.

21 MR. MAGGIORE: You also have the  
22 right to summon any relevant person or  
23 produce any relevant evidence that will  
24 enable you to defend yourself against  
25 the charges placed against you, at no

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1 cost to the Carrier.

2 Do you understand that right?

3 MR. DREW: Yes.

4 MR. MAGGIORE: You are also entitled  
5 to cross-examine any witness and examine  
6 any evidence that may be produced by the  
7 Carrier or have a union representative  
8 do so on your behalf.

9 Do you understand that right?

10 MR. DREW: Yes.

11 MR. MAGGIORE: Mr. Drew, are you  
12 ready to continue with the trial today?

13 MR. DREW: Yes.

14 MR. MAGGIORE: Mr. Sanchez, is the  
15 Organization ready to continue with the  
16 trial today?

17 MR. SANCHEZ: Yes, I just have to  
18 make some copies.

19 MR. MAGGIORE: Want to take a  
20 recess?

21 MR. SANCHEZ: Yes, let's take five  
22 minutes.

23 MR. MAGGIORE: The time is now  
24 10:00 a.m. We are going to take a brief  
25 recess in order to allow Mr. Sanchez to



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1 make some copies.

2 (Whereupon, a short recess was  
3 taken.)

4 MR. MAGGIORE: The time is now  
5 10:09 a.m., and we are back on the  
6 record.

7 At this time, the Carrier does not  
8 have any witnesses to call.

9 Mr. Sanchez, does the Organization  
10 have any witnesses it would like to  
11 call?

12 MR. SANCHEZ: Yes, Corinne Swicicki.

13 MR. MAGGIORE: You would like to  
14 recall Ms. Swicicki?

15 MR. SANCHEZ: Yes.

16 MR. MAGGIORE: All right. The time  
17 is 10:10 a.m. We are going to take a  
18 brief recess.

19 I will contact Ms. Swicicki, and  
20 she will appear via Teams.

21 (Whereupon, a short recess was  
22 taken.)

23 MR. MAGGIORE: The time is  
24 approximately 10:36 a.m. We are back on  
25 the record.

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1           The Organization has requested to  
2 recall Mr. Christopher Yodice.

3           Mr. Yodice is present.

4           Rick, please feel free to ask any  
5 questions you have of Mr. Yodice.

6           MR. SANCHEZ: All right, Chris. I'm  
7 going to ask you questions that may be  
8 redundant, but we don't have a  
9 transcript, and we are building a record  
10 here; so, if we do, I apologize in  
11 advance.

12           MR. YODICE: Okay.

13           MR. SANCHEZ: Chris, are you the  
14 Carrier's liaison for the FRA, in terms  
15 of policy?

16           MR. YODICE: Yes.

17           MR. SANCHEZ: Can you tell us what  
18 your job entails when it comes to the  
19 FRA and Rail Road Policy?

20           MR. YODICE: Sure. So, my job is  
21 Assistant Director of Employee Services.  
22 It entails a number of things unrelated  
23 to drug and alcohol; oversight of the  
24 medical facility, reasonable  
25 accommodation, that sort of thing.

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1           With regard to drug and alcohol, I  
2           am the employee, Long Island Rail Road's  
3           designated employee representative,  
4           which puts me in the position of being  
5           the main point of contact with the FRA  
6           on any drug and alcohol issues.

7           And, although not official, am the  
8           Rail Road's main point for their own  
9           alcohol and substance abuse policy,  
10          MED005.

11          MR. SANCHEZ:   And are you familiar  
12          with the trial charges against  
13          Mr. Darren Drew?

14          MR. YODICE:    Yes.

15          MR. SANCHEZ:   I will give you  
16          Carrier Exhibit 1, just so you have it  
17          in front of you (handing).

18          MR. YODICE:    Great, thank you.

19          MR. SANCHEZ:   Can you tell me  
20          exactly what Mr. Drew is being charged  
21          with?

22          MR. YODICE:    Sure.   Mr. Drew is -- I  
23          mean, I can read it from here, and then  
24          I'll go on.

25          MR. SANCHEZ:   Yes.

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1 MR. YODICE: -- is being charged  
2 with the detection of a prohibited  
3 substance resulting from any required  
4 toxicological test. That is a violation  
5 of the policy.

6 And essentially, Mr. Drew had  
7 reported to us for a return to work  
8 test, required under Long Island Rail  
9 Road's policy, and the result of that  
10 came back positive for marijuana.

11 MR. SANCHEZ: Okay. For marijuana  
12 or marijuana metabolites?

13 MR. YODICE: A better question for  
14 the doctor. It's reported to me as a  
15 result for marijuana.

16 MR. SANCHEZ: What triggers a return  
17 to work physical --

18 MR. YODICE: So, --

19 MR. SANCHEZ: -- in Mr. Drew's case?  
20 I'm sorry.

21 MR. YODICE: That's okay. So, a  
22 return to work drug test, specifically?

23 MR. SANCHEZ: Yes. In this  
24 particular instance, yes.

25 MR. YODICE: Yes. So, the Rail Road

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1 has a policy, like I said, their alcohol  
2 and substance abuse policy, which has a  
3 provision that says a return to work  
4 drug test will be performed on any  
5 safety-sensitive employee who was out of  
6 work for thirty calendar days or more  
7 for any reason.

8 So, I don't have the length of  
9 Mr. Drew's absence in front of me, but  
10 it was over thirty days. As standard  
11 procedure, someone calls from medical  
12 and as part of their return to duty  
13 assessment, they do get a return to work  
14 drug test.

15 MR. SANCHEZ: Now, that is the Long  
16 Island Rail Road's policy for return to  
17 work physical?

18 MR. YODICE: Correct, correct.

19 MR. SANCHEZ: Is there a federal  
20 policy for a return to work physical  
21 that makes it a requirement?

22 MR. YODICE: No. The test we  
23 performed on Mr. Drew, or someone in  
24 that situation, not a federal  
25 requirement.

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1 MR. SANCHEZ: Okay. But not  
2 Mr. Drew, and why not?

3 MR. YODICE: The only return to work  
4 test required by the regulation is for  
5 someone who is coming back from a  
6 violation of the FRA, we'll say in this  
7 instance, from a federal drug or alcohol  
8 test.

9 MR. SANCHEZ: Okay. Just for the  
10 record, Mr. Drew, and stop me if I'm  
11 wrong, I'm going to simplify.

12 We have two classifications of  
13 employees, one who would be considered  
14 subject to federal regulations, and  
15 someone who wouldn't be subject to  
16 federal regulations, right?

17 MR. YODICE: Correct.

18 MR. SANCHEZ: So, Mr. Drew, in this  
19 particular case, is not subject to  
20 federal regulations, but he is subject  
21 to the Carrier's policy is the reason he  
22 was subjected to a drug and alcohol  
23 test?

24 MR. YODICE: That's correct.

25 MR. SANCHEZ: And for federal, the

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1           only way that you are subject to a  
2           required test for a return to work  
3           physical is if you have already tested  
4           positive for a prohibited substance,  
5           right?

6           MR. YODICE: Correct, and you are  
7           going through the return to duty  
8           process, per the federal regulation.

9           MR. SANCHEZ: Okay. Is that, to the  
10          best of your knowledge, the only federal  
11          requirement, required test, for someone  
12          who is under covered service?

13          MR. YODICE: No. There's a number  
14          of required tests for people under  
15          covered service. You know, the term  
16          they use in the regulation is "regulated  
17          service," right?

18          MR. SANCHEZ: Yes.

19          MR. YODICE: It's covered service,  
20          which is our service, plus M of W, plus,  
21          now, the mechanical group.

22          Per the regulation, there's a number  
23          of reasons you test under federal  
24          authority. The one we spoke about,  
25          which is someone who is coming back from

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1 a prior federal violation of drug and  
2 alcohol, is the only time someone would  
3 be tested under that authority for a  
4 return to duty.

5 But, for example, when we test for  
6 random, it's under federal authority.  
7 If we were to do a reasonable suspicion  
8 for a federally-regulated employee, it's  
9 under federal authority.

10 So, they give us a number of  
11 categories in which to test people.

12 MR. SANCHEZ: And in Mr. Drew's  
13 case, is he subject to a random while he  
14 is working?

15 MR. YODICE: I don't know offhand,  
16 and M of E is always the trickiest  
17 because it depends on work they're  
18 doing.

19 I could look at a list. I can find  
20 out. But I can tell you if he is Hours  
21 of Service, if he's an ASC or an ETC  
22 electrician, then he is subject to  
23 random. If he performs M of W work, as  
24 defined by the regulation, subject to  
25 random. Again, M of E is the trickiest,



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1           it depends on the work they do.

2           MR. SANCHEZ: Yes. Well, he is an  
3 M of E electrician, and he is in the  
4 support shop. He does inform the ATC.  
5 Hours of Service, doesn't do any of that  
6 stuff.

7           So, that being said, is he subject  
8 to random during working hours?

9           MR. YODICE: Again, not looking to  
10 avoid it, I would have to check the  
11 list. And I say this, --

12           I teach a class as well -- and I  
13 say, in engineering, you could give me a  
14 title and I know you're subject to it.

15           In transportation, if you give me a  
16 title, I know you're subject to it. In  
17 M of E, you can have this electrician  
18 and this electrician, same title, this  
19 one is subject to it, based on work  
20 they've performed, and this one is not.

21           So, really, Rick, what I would end  
22 up doing, if we wanted to look at a  
23 particular time period, I would have to  
24 go back to the list provided by M of E  
25 Manpower to see if he fell on that list.

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1 He would fall on that list if he had  
2 previously performed the regulated work.

3 MR. SANCHEZ: And that list that you  
4 are referring to, how often is that list  
5 updated?

6 MR. YODICE: We get it once a month  
7 from the Department.

8 MR. SANCHEZ: Okay. And with the  
9 list, does this look familiar?

10 I'm going to give you a document to  
11 look over before we identify it  
12 (handing).

13 MR. MAGGIORE: Is this an  
14 organization exhibit?

15 MR. SANCHEZ: Yes.

16 MR. MAGGIORE: Okay. Was that  
17 copied?

18 MR. SANCHEZ: Yes, I will make a  
19 copy after. This is just so he can  
20 identify because I think that is the  
21 list he's referring to that he would  
22 look for.

23 MR. YODICE: Rick, I don't think I  
24 get this copy of it. So, --

25 MR. MAGGIORE: Hold on real quick.

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1 For the record, let's identify the  
2 document.

3 It says, "HOS1-19-2002," and in  
4 brackets, it says "4148." And how many  
5 pages is this? It appears to be a  
6 ten-page document. It contains a list  
7 of employees' names.

8 MR. SANCHEZ: Yes. Chris, does that  
9 document look familiar?

10 MR. YODICE: No. I've never seen  
11 this document in this format.

12 MR. SANCHEZ: In this format?

13 MR. YODICE: Correct. Now, what we  
14 get from the Department, on or about  
15 the 20th of every month, is what we  
16 refer to as pools.

17 You know, "Hey, we need the Hours of  
18 Service pool. We need the M of W pool."  
19 You know, whether or not the pool, were  
20 it provided in a different format, is  
21 the same as this, I don't know. I would  
22 have to compare.

23 But, that's the only way. So, say,  
24 for example, we wanted a definite answer  
25 on whether Mr. Drew was subject to

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1 random, let's say as of his last date on  
2 property, I would have to go back to  
3 that list. I would have to go into my  
4 files and pull up the list provided by  
5 the Department and see if he was on  
6 there.

7 MR. SANCHEZ: Do you have access to  
8 that list?

9 MR. YODICE: I do.

10 MR. SANCHEZ: Can you pull that up  
11 easily?

12 MR. YODICE: Sure. If you give me a  
13 month, I can pull up the list.

14 MR. SANCHEZ: A month?

15 MR. MAGGIORE: No, he's --

16 MR. SANCHEZ: Oh, I thought you said  
17 a month. June. So, we will look at  
18 the -- he took a return to work, the  
19 trial was scheduled --

20 MR. DREW: In June of '22.

21 MR. SANCHEZ: In June of 2022.

22 MR. YODICE: June of 2022. And I  
23 would say this as well, just to qualify,  
24 how long was Mr. Drew out prior to June?

25 MR. SANCHEZ: Four months,

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1 approximately.

2 MR. DREW: Approximately four  
3 months.

4 MR. YODICE: So, it very well may be  
5 that we may want to look as well, at the  
6 last date he worked, because the  
7 Department may have a mechanism where  
8 they take people off the list if they're  
9 not active.

10 MR. SANCHEZ: That'd be fine, okay.

11 MR. YODICE: So, we're really  
12 looking for, was he on the list when  
13 this all went down?

14 MR. SANCHEZ: Yes. And that list  
15 would be the only documentation that  
16 medical would have that he would fall  
17 under randoms? That list puts him under  
18 federal regulations.

19 MR. YODICE: Right. So, we get a  
20 list every month. Any employee could've  
21 been on it four months prior, but not  
22 this month because of the work they did.

23 But, if we were to look at the list  
24 for the last month he worked, it would  
25 indicate to me that, as of that month,

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1 he is considered federally-regulated,  
2 subject to random.

3 MR. SANCHEZ: Okay. Could you  
4 produce that document?

5 MR. YODICE: Sure.

6 MR. MAGGIORE: Well, before that, is  
7 this being entered as a Union Exhibit or  
8 not (indicating)?

9 MR. SANCHEZ: No, it's not. I'll  
10 take that back.

11 MR. MAGGIORE: (Handing.)

12 MR. SANCHEZ: That's just, I thought  
13 it looked the same because as soon as  
14 the Department gives us any --

15 (Whereupon, the Reporter indicated  
16 the presence of a noise interruption.)

17 MR. MAGGIORE: Excuse me, Mr. Drew.  
18 Please, if you want to have  
19 conversations with Mike, just do so off  
20 the record.

21 So, we will take a brief recess to  
22 allow Mr. Yodice to produce the document  
23 Mr. Sanchez is requesting.

24 The time is 10:46 a.m. We are going  
25 to take a brief recess.

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1 (Whereupon, a short recess was  
2 taken.)

3 MR. MAGGIORE: The time is  
4 approximately 11:01 a.m., and we are  
5 back on the record.

6 Mr. Yodice has joined us and has  
7 made copies requested by the  
8 Organization.

9 Can you provide the copies, please?

10 MR. YODICE: Absolutely, and I will  
11 give an explanation of what we have.

12 MR. MAGGIORE: Okay. I will mark  
13 and enter this as Organization  
14 Exhibit 6.

15 (Whereupon, List of Employees (22  
16 pages) was marked as Organization  
17 Exhibit 6 for identification as of this  
18 date.)

19 MR. SANCHEZ: This is alphabetical  
20 order, right?

21 MR. YODICE: No.

22 MR. SANCHEZ: Oh, it's not?

23 MR. YODICE: No. I searched them  
24 all, though, just to see if Darren was  
25 on there. I didn't want to manipulate

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1           what they had sent, so I just printed it  
2           the way sent it.

3           MR. SANCHEZ: Yes. Is there any  
4           order to this? We're still off the  
5           record, so.

6           MR. YODICE: (Indicating.)

7           MR. SANCHEZ: Nothing?

8           MR. YODICE: I don't think so.

9           MR. SANCHEZ: Not even, like, an IBM  
10          number order?

11          MR. YODICE: No. I was looking at  
12          it, I didn't see anything.

13          MR. DREW: We're on the record,  
14          right?

15          (Whereupon, the Reporter indicated  
16          Mr. Sanchez's testimony.)

17          MR. DREW: Okay, because he just  
18          said it.

19          MR. MAGGIORE: We're on the record.  
20          Just so we're clear, when I say we're on  
21          the record, we're on the record.

22          If you want to take a recess, just  
23          ask, and we will go back off the record.

24          MR. SANCHEZ: I'm sorry.

25          MR. MAGGIORE: All right. So, we



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1 are on the record. Mr. Yodice provided  
2 me with a document approximately  
3 22 pages. As I've noted, it will be  
4 marked as Organization Exhibit 6.

5 Mr. Sanchez, do you have any  
6 questions regarding this document?

7 MR. SANCHEZ: Yes.

8 Chris, can you identify the document  
9 and tell us exactly what it shows?

10 MR. YODICE: Absolutely. So, the  
11 full document is made up of a few  
12 separate documents.

13 The background of this is when we do  
14 our random testing, the Department has  
15 brought us a pool of regulated employees  
16 who are included in the random testing  
17 pool. They are the ones who are subject  
18 to be selected for random testing in any  
19 given month.

20 So, the Department, around, about  
21 the 20th of the month prior, sends us  
22 the pools. These are M of E's pools.  
23 So, the documents you see in front of  
24 you, like I said, they are made up of  
25 separate documents.

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1           The first grouping of three are the  
2           pools provided by M of E to medical for  
3           June of 2022. The first few pages are  
4           Hours of Service because we do run  
5           separate pools.

6           The second set of pages, they have  
7           marked it as "MOE." You know, we call  
8           it M of W. Right; M of W? So, M of W  
9           or M of E, why they've marked it as  
10          "MOE," I'm not quite sure, but that's  
11          what you're looking at there. That's a  
12          single, double-sided page.

13          Then, the last in that group in that  
14          first three is their mechanical pool.  
15          It will say "MECH" on top, M-E-C-H.

16          So, depending on what pool an  
17          employee falls into will determine what  
18          list they're on with regard to these.

19          So, that's June. Then, the last few  
20          pages are February's pools, and there  
21          are only two at this point. Because in  
22          February 2022, the MECH pool was not yet  
23          in effect.

24          So, when you're looking at the final  
25          few pages, the pages are MOE -- again,

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1           they've marked it MOE, it's the M of W  
2           pool -- and the last group of pages is  
3           the Hours of Service.

4           So, long way of saying this is the  
5           names provided by the Maintenance of  
6           Equipment Department to medical to be  
7           included in the random testing pools for  
8           the month of June 2022 and February  
9           of 2022.

10           To Rick's point, no order to this,  
11           and I didn't want to manipulate the data  
12           before I brought it in. So, I didn't  
13           sort it or anything, but I did do a  
14           search.

15           So, in searching each of the pools,  
16           and there are five separate pools here,  
17           I did not find Darren's name in any of  
18           them.

19           MR. SANCHEZ: So, he wouldn't be  
20           subject to federal drug and alcohol  
21           random test?

22           MR. YODICE: Correct. Correct, in  
23           these months.

24           MR. SANCHEZ: Okay. And when  
25           someone comes in for a return to work

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1 physical, it says, they do a drug and  
2 alcohol test. Now, we know they do the  
3 alcohol, do they do an alcohol test -- I  
4 mean, I'm sorry.

5 We know they do a toxicological  
6 test, but we haven't seen an alcohol  
7 test. Do they do an alcohol test?

8 MR. YODICE: In company-authorized  
9 return to duty, we do not do an alcohol  
10 test.

11 MR. SANCHEZ: And is that company  
12 policy?

13 MR. YODICE: I don't think it's a  
14 company policy. Actually, I know the  
15 policy itself.

16 Rick, you have one, I don't have one  
17 in front of me. I don't know if it's  
18 one of those that says "drug and/or  
19 alcohol."

20 MR. SANCHEZ: Yes. It says,  
21 "Alcohol and Substance Abuse, Drug and  
22 Alcohol Policy."

23 MR. YODICE: Yes. Rick, if you  
24 don't mind, if we could have a copy, I  
25 know the section and I can flip to it

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1 just to see what it says for return to  
2 duty.

3 MR. SANCHEZ: (Handing.)

4 MR. MAGGIORE: Hold on, I think I  
5 have a clean copy here.

6 MR. SANCHEZ: Well, I mean,  
7 (indicating).

8 MR. MAGGIORE: Oh, all right.

9 MR. YODICE: No, it's okay. I know  
10 where it is.

11 Okay. So, return to duty. I'll try  
12 not to mumble so she can hear.

13 Yes, it says, "will be subject to  
14 drug and/or alcohol testing." I'll be  
15 honest, I think it's wording in the  
16 policy that's been carried over for  
17 years and years and never got edited  
18 out.

19 But, in my time here, which is  
20 almost ten years, -- it's going to be  
21 ten years this year -- we've never done  
22 an alcohol test for company-authorized  
23 return to work.

24 MR. SANCHEZ: And do you know why we  
25 don't do an alcohol test?

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1 MR. YODICE: I don't.

2 MR. SANCHEZ: Do you know who -- I  
3 mean, the purpose of a return to work  
4 physical when it comes to the  
5 toxicological is safety-related.

6 So, why are we taking a  
7 toxicological test? Why do we do a drug  
8 test on a return to work physical?

9 MR. YODICE: My assumption, and this  
10 is just me talking, is to make sure that  
11 someone is not using any prohibited  
12 substances before returning to work.

13 MR. SANCHEZ: Okay. Is alcohol  
14 considered a prohibited substance?

15 MR. YODICE: It's considered -- so,  
16 per policy, it's not a prohibited  
17 substance to use. It's a prohibited  
18 substance to be under the influence of  
19 while you're working or subject to work.

20 MR. SANCHEZ: Okay. Is marijuana,  
21 to the best of your knowledge, a  
22 prohibited substance for employees who  
23 are not regulated or Hours of Service  
24 employees?

25 MR. YODICE: Per policy, yes.

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1 MR. SANCHEZ: When you say "per  
2 policy," so alcohol is a prohibited  
3 substance, even though it's legal?  
4 Meaning, you can't have it in your  
5 system, you can't be impaired while at  
6 work; is that correct for alcohol?

7 MR. YODICE: For alcohol, that's  
8 correct.

9 MR. SANCHEZ: And the Carrier's  
10 policy is marijuana, even though it is  
11 now legal, can't be in your body at all?

12 MR. YODICE: Correct.

13 MR. SANCHEZ: Okay. I guess two or  
14 three more questions.

15 I'm going to classify employees just  
16 to make this easy. There's three, and  
17 stop me if I miss someone, regulated,  
18 safety and non-safety sensitive. But, I  
19 think that pretty much encapsulates  
20 everyone in the policy, right?

21 MR. YODICE: Correct, right.

22 MR. SANCHEZ: So, regular employees,  
23 or employees that fall under federal  
24 authority, --

25 MR. YODICE: Yes.

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1 MR. SANCHEZ: -- and all employees  
2 fall under company authority?

3 MR. YODICE: Correct.

4 MR. SANCHEZ: Right. So, this  
5 policy, the drug and alcohol policy,  
6 does that policy affect all employees on  
7 the Long Island Rail Road, all three  
8 classifications; regulated, safety and  
9 non-safety sensitive employees, to the  
10 best of your knowledge?

11 MR. YODICE: Yes. And funny, I  
12 actually, when I do the class on this,  
13 we do a distinction between the policy  
14 applies to every employee in the Rail  
15 Road, certain provisions of the policy,  
16 such as random testing, apply to only  
17 certain classifications of employee.  
18 Correct.

19 MR. SANCHEZ: Okay. So, a regulated  
20 employee is subject to randoms?

21 MR. YODICE: Correct.

22 MR. SANCHEZ: Okay. That's the  
23 distinction between regulated, safety  
24 and non-safety, --

25 MR. YODICE: Yes.



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1 MR. SANCHEZ: -- they fall under  
2 federal authority?

3 MR. YODICE: Uh-huh.

4 MR. SANCHEZ: All employees are  
5 subject to suspicion?

6 MR. YODICE: Correct.

7 MR. SANCHEZ: Probable cause?

8 MR. YODICE: Correct.

9 MR. SANCHEZ: Post-accident,  
10 depending on the threshold amount of  
11 damage?

12 MR. YODICE: So, post-accident,  
13 funny enough, is just regulated  
14 employees.

15 MR. SANCHEZ: All right. And all  
16 classifications of employees, regulated,  
17 safety and non-safety sensitive  
18 employees, they fall under company  
19 policy with respect to return to work  
20 physicals after thirty or more days.

21 MR. YODICE: Everyone but non-safety  
22 sensitive. So, non-safety sensitive  
23 doesn't get drug tested, either going  
24 into their position or when they are  
25 returning to the position after thirty

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1 days.

2 MR. SANCHEZ: So, the Carrier's  
3 policy is not for all employees, it's  
4 only for safety-sensitive and regulated  
5 employees.

6 Non-safety sensitive employees  
7 aren't subject to drug tests that  
8 regulated and safety employees are  
9 subject to.

10 MR. YODICE: In some instances, yes.

11 MR. SANCHEZ: Okay. So, if a  
12 non-safety sensitive employee is out for  
13 thirty days, they don't come back for a  
14 return to work physical?

15 MR. YODICE: Depending, so they may  
16 come back for a return to work physical.  
17 So, for example, a lot of TCU employees  
18 are non-safety sensitive; clerical,  
19 sedentary.

20 Per their contract, they need  
21 medical clearance to return to work  
22 after fifteen days.

23 MR. SANCHEZ: Okay.

24 MR. YODICE: So, they may come  
25 through us, but if they're non-safety

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1 sensitive, they won't get a drug test.

2 MR. SANCHEZ: Okay. And how long  
3 have you been in your position, Chris?

4 MR. YODICE: Almost ten years. It  
5 will be ten years this year.

6 MR. SANCHEZ: In your ten years in  
7 your position, to the best of your  
8 knowledge, do you recall any employees  
9 who may have come up positive on a drug  
10 test given by the Carrier and not  
11 subject to the rules under the policy?

12 MR. YODICE: I'm sorry?

13 MR. SANCHEZ: So, to the best of  
14 your knowledge, say an employee who is a  
15 safety-sensitive employee, who is under  
16 the federal authority, was given a  
17 random test accidentally.

18 MR. YODICE: Okay.

19 MR. SANCHEZ: Now, in that  
20 particular case, that employee, what  
21 would happen to an employee if that were  
22 to happen, if you know?

23 MR. YODICE: Can I answer?

24 MR. MAGGIORE: You can answer his  
25 question.

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1 MR. YODICE: Okay. So, there was  
2 one, as a matter of fact, where, per the  
3 Department, the Department put the  
4 person in the random pool.

5 So, the person was selected. The  
6 person came and was tested, and after  
7 the fact, we were alerted that, "Hey,  
8 the person never should've been in the  
9 random pool."

10 So, you have to work that  
11 backwards -- I'll scratch that, I missed  
12 a step.

13 Were tested, came up positive. So,  
14 "Hey, here is the notification, it came  
15 up positive. It came back that they  
16 never should've been in that pool."

17 So, in that instance, we worked it  
18 backwards. "Well, we didn't have the  
19 authority to test them." So, since we  
20 didn't have the authority to test them,  
21 the positive doesn't stand.

22 So now, we are in the situation  
23 where the person is not going to be out  
24 of service for a violation because the  
25 positive doesn't stand, we didn't have

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1 the authority to test them. However, we  
2 are aware that they have a prohibited  
3 substance in the system.

4 To the best of my knowledge, in that  
5 instance, what we said is the person is  
6 going to remain out sick on their own  
7 time for a period of thirty days, or  
8 thereabout, and we are going to retest  
9 that person before coming back to work.  
10 And upon retest, if they're negative, we  
11 are going to allow them back to work  
12 with no charge.

13 MR. SANCHEZ: Okay. So, when you  
14 say the Carrier, basically the Carrier  
15 tested someone. And when you say "they  
16 had no authority," the Carrier's policy  
17 is they have -- their policy is the  
18 authority, it says, "Carrier Authority,  
19 Long Island Rail Road Authority."

20 So, why did the Carrier not use that  
21 authority as a basis to discipline this  
22 employee for a positive because he had a  
23 prohibited substance while on duty, to  
24 the best of your knowledge?

25 MR. YODICE: Good question. So, it

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1 gets kind of sticky. So, the FRA will  
2 say, "You can't use a federal test for  
3 any purpose that is isn't authorized by  
4 the FRA."

5 So, the employee was tested under  
6 federal authority. So, the custody  
7 control form said, "Tested under federal  
8 authority," it was a federal form, it  
9 was for random.

10 I always said, it's like watching  
11 the law shows, you know, where someone  
12 is guilty, you know they're guilty, but  
13 the judge says, "Hey, technicality."

14 You know, it was the wrong this or  
15 the wrong that, or for whatever reason,  
16 no one is questioning the "guilt" of the  
17 person, but you didn't have the right to  
18 do what you did, they get off.

19 MR. SANCHEZ: Okay. So, when you  
20 say "they didn't have the right,"  
21 employees have certain constitutional  
22 rights, those are the rights we're  
23 talking about?

24 MR. YODICE: The FRA certainly cites  
25 constitutional rights in terms of drug

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1 test. But my reference is to, if that  
2 employee were not selected for a random  
3 incorrectly, -- I should say the  
4 selection was fine, they shouldn't have  
5 been on the list to begin with.

6 If that person wasn't mistakenly put  
7 on the list, we wouldn't have tested  
8 that person. If we wouldn't have tested  
9 that person, we wouldn't have ended up  
10 with the result we did.

11 We never had the authority to do the  
12 test. It wasn't a company-authorized  
13 return to duty, or a company-authorized  
14 reasonable cause.

15 If we didn't cite, and we would've  
16 cited because it's what we understood at  
17 the time, we didn't cite, "Hey, this  
18 person is subject to random. They were  
19 selected for a random. They were  
20 positive for a random."

21 If Step 1 never happened, that  
22 they're subject to random, the rest  
23 never would've happened.

24 MR. SANCHEZ: Never would've  
25 happened, okay.

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1           So, if you are not a regulated  
2           employee and you are a safety-sensitive  
3           employee, and you're deemed safety  
4           sensitive by the Carrier, do you know if  
5           there is a distinction? The FRA, do  
6           they use the term "safety sensitive"?

7           MR. YODICE: I think they do in some  
8           of the regulations, and I can't swear to  
9           it. But, I think they do it. I think  
10          they say, "performing safety-sensitive  
11          functions."

12          MR. SANCHEZ: And when they say  
13          that, do you know what exactly that  
14          means, "safety-sensitive functions"?

15          MR. YODICE: Depending on what  
16          regulation you're talking about, right,  
17          because there are a number of  
18          regulations.

19          My understanding of it is that they  
20          are talking about either the M of W  
21          definition, which is in 2.14, or the  
22          Hours of Service, which I don't know  
23          what regulation it is, but the Hours of  
24          Service function.

25          MR. SANCHEZ: And just one more, so



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1 employees that are deemed  
2 safety-sensitive by the Carrier, there  
3 are only limited circumstances where  
4 they can be subject to a drug and  
5 alcohol test; suspicion?

6 MR. YODICE: Suspicion, yes.

7 MR. SANCHEZ: Reasonable cause?

8 MR. YODICE: Uh-huh.

9 MR. SANCHEZ: Return to work  
10 physical?

11 MR. YODICE: Return to work  
12 physical.

13 MR. SANCHEZ: After thirty days?

14 MR. YODICE: After thirty days.

15 MR. SANCHEZ: And so, do you know  
16 why the Carrier has chosen thirty days  
17 as a line to determine who gets subject  
18 to testing and who doesn't? Is there a  
19 basis in that, or if you're familiar --

20 MR. YODICE: Rick, I don't. It was  
21 in effect, you know, long before, back  
22 when I was in engineering, as a matter  
23 of fact. Yes, I can make my guesses,  
24 but I don't know.

25 MR. SANCHEZ: Okay. I have no

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1 further questions. I'm good.

2 Do you have any questions?

3 MR. DREW: No.

4 MR. MAGGIORE: Mr. Drew, do you have  
5 any questions?

6 MR. DREW: No.

7 MR. MAGGIORE: Okay. The time is  
8 approximately 11:18 a.m. Mr. Yodice,  
9 you are excused.

10 We are going to take a brief recess.

11 (Whereupon, a short recess was  
12 taken.)

13 MR. MAGGIORE: The time is now  
14 11:38 a.m., and we are back on the  
15 record.

16 We have been joined by Dr. Mujtaba  
17 at the request of the Organization.

18 Mr. Sanchez, do you have any  
19 questions for Dr. Mujtaba?

20 MR. SANCHEZ: Yes.

21 Hello, Dr. Mujtaba. I just have a  
22 couple more questions. They may be  
23 redundant, and I apologize, but they  
24 will be short.

25 Would you just define the difference

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1 between THC and marijuana metabolites?

2 DR. MUJTABA: I'm sorry?

3 MR. SANCHEZ: Could you tell us the  
4 difference between THC and marijuana  
5 metabolites?

6 DR. MUJTABA: Well, the  
7 metabolites -- THC is one of the  
8 metabolites of marijuana. There are a  
9 bunch of metabolites, but this is the  
10 only one they check for, as per the lab  
11 standards of DOT.

12 MR. SANCHEZ: All right. So, is  
13 there a difference between THC and  
14 marijuana metabolites, or is it the same  
15 thing?

16 DR. MUJTABA: THC is one of the  
17 metabolites of the marijuana.

18 MR. SANCHEZ: Okay. So,  
19 metabolites, having marijuana  
20 metabolites, does that prove  
21 intoxication or impairment, the  
22 metabolites?

23 DR. MUJTABA: The test is done to  
24 look for the presence of the metabolites  
25 For him, it's not the goal of doing the

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1 test. Okay? For this person, it was  
2 done for return to duty, and then it  
3 came back positive and, you know?

4 MR. SANCHEZ: No, but what I'm  
5 asking: So, you have THC, and, if I  
6 understand it correctly, THC  
7 metabolites.

8 Now, the metabolites is what's left  
9 after, what's left in your system after  
10 the THC subsides; is that correct?

11 DR. MUJTABA: Yes, THC is one of the  
12 metabolites of marijuana.

13 I don't know where you're getting  
14 this information. THC is one of the  
15 metabolites of marijuana.

16 MR. SANCHEZ: Can you go to Carrier  
17 Exhibit 13?

18 DR. MUJTABA: Yes, I got it.

19 MR. SANCHEZ: Okay. I just have a  
20 couple questions.

21 So, it says there are thirteen  
22 tests, substances that are tested for,  
23 right?

24 DR. MUJTABA: Okay.

25 MR. SANCHEZ: So, it says,

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1 "amphetamines, barbiturates," if you go  
2 down, "cocaine metabolites, marijuana  
3 metabolites," right?

4 So, let me ask you something, is  
5 cocaine metabolites different than  
6 cocaine?

7 DR. MUJTABA: Yes, these are  
8 metabolites, you know, they're the  
9 breakdown products.

10 MR. SANCHEZ: Okay, but that's my  
11 question.

12 So, a metabolite is what happens  
13 when cocaine breaks down?

14 DR. MUJTABA: Right.

15 MR. SANCHEZ: Okay. Well, that's  
16 what I'm asking.

17 So, the same thing with marijuana,  
18 marijuana metabolites is what's left,  
19 the metabolite is --

20 DR. MUJTABA: Breaks on down  
21 after, --

22 MR. SANCHEZ: -- what's left when it  
23 breaks down?

24 DR. MUJTABA: -- right.

25 MR. SANCHEZ: So, what causes

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1           impairment; marijuana or the  
2           metabolites?

3           DR. MUJTABA: I can't answer that.  
4           I mean, if somebody used marijuana every  
5           day, highly intoxicated, it will show up  
6           on the examination, basically.

7           For the purpose of that, they  
8           profile it "duty-standard regulation,"  
9           they check for metabolites. If it's  
10          positive, as per DOT, this means it's  
11          positive.

12          MR. SANCHEZ: But I'm asking -- my  
13          question is, Doctor: THC, isn't it, in  
14          fact, a fact, a medical fact, that it's  
15          THC that causes the impairment and the  
16          metabolites does not?

17          DR. MUJTABA: I cannot answer that.  
18          I'm not an expert in that kind of --

19          MR. SANCHEZ: You don't have --  
20          Doctor, but you're the --

21          MR. MAGGIORE: Excuse me, one at a  
22          time. You've asked a question, let the  
23          Doctor answer. After the Doctor  
24          answers, you can ask a question.

25          DR. MUJTABA: So, getting back, no.

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1 I mean, there's some active metabolites  
2 that was present. It depends on how  
3 soon you use the marijuana, and if  
4 you're impaired, you're impaired.

5 I mean, I'm not understanding any  
6 connection with metabolites versus  
7 marijuana.

8 MR. SANCHEZ: Okay. So, let me ask  
9 you a question. So, say, I smoke a  
10 joint today, right now.

11 In two hours, three hours from now,  
12 I take this same test, --

13 DR. MUJTABA: Right?

14 MR. SANCHEZ: -- would the test  
15 determine, would it give me a reading  
16 for marijuana and marijuana metabolites  
17 or just marijuana?

18 DR. MUJTABA: The thing is, they  
19 don't check for the marijuana, they  
20 check for metabolites, as per DOT  
21 Regulations. Okay?

22 So, I didn't make this regulation,  
23 you know that, they check for  
24 metabolites.

25 MR. SANCHEZ: Okay.

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1 DR. MUJTABA: Whether the person is  
2 impaired or not depends on how much  
3 they're taking marijuana, basically.

4 MR. SANCHEZ: Okay. So, here, the  
5 marijuana metabolites, it says,  
6 "positive, 50 nanograms."

7 Now, the first column, it says,  
8 "Initial Level, 50." Then, it says,  
9 "The MS confirmed 15;" do you see that?

10 DR. MUJTABA: Right.

11 MR. SANCHEZ: So, is 50 the cutoff?  
12 What necessitates the second test?

13 So, in other words, it says, "50  
14 nanograms." If it had been 49, would we  
15 have had a second test?

16 DR. MUJTABA: No, it's a cutoff  
17 point. So, as per DOT Regulations, if  
18 it's 50 or more, they check for the  
19 confirmatory to return it to the DS MSC.

20 MR. SANCHEZ: Okay. So, if I  
21 understand you correctly, if you take  
22 the -- 50 triggers a second test?

23 DR. MUJTABA: Yes. As per the  
24 regulation, 50 or more.

25 MR. SANCHEZ: 50 or more, okay.



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1 DR. MUJTABA: It was a federal point  
2 exam.

3 MR. SANCHEZ: Okay. So, my next  
4 question is, if you go to the bottom on  
5 the first, "in range."

6 DR. MUJTABA: Right?

7 MR. SANCHEZ: Marijuana metabolites,  
8 the initial reading was 31 nanograms.

9 DR. MUJTABA: No, no. That's not  
10 really confirmation of 15. 15, as per  
11 DCMS is 15 federal points. So, higher  
12 than anything 15 or more, they will  
13 confirm as positive.

14 MR. MAGGIORE: I'm sorry, one  
15 second.

16 MR. SANCHEZ: Sure.

17 MR. MAGGIORE: Dr. Mujtaba, could  
18 you please clarify; are you saying 15,  
19 one-five, or 50, five-zero?

20 DR. MUJTABA: Well, 50 is for the  
21 initial, right?

22 MR. MAGGIORE: One-five or  
23 five-zero?

24 DR. MUJTABA: It's one-five for the  
25 confirmatory test, that's why they

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1 report the test. If it's higher  
2 than 15, they report it as positive.

3 MR. MAGGIORE: Thank you.

4 MR. SANCHEZ: Okay. So, just so  
5 we're clear, the initial test level  
6 is 50? It's Carrier Exhibit --

7 DR. MUJTABA: That's the range they  
8 gave me. These are the information that  
9 came on the federal point for that, the  
10 initial and the MS confirmation.

11 If you look at the column, it says  
12 very clearly, what are the federal  
13 points. Okay? And his federal points  
14 was more than 15 for the MS test, that's  
15 why it says, "positive."

16 MR. DREW: So, for the initial  
17 test --

18 MR. MAGGIORE: Hold on one second.  
19 Mr. Drew, if you have any questions,  
20 please ask them to Dr. Mujtaba.

21 MR. DREW: My question is, the  
22 initial test level says 50 nanograms --

23 DR. MUJTABA: But it's not your  
24 test, it's the lab's reference rate.  
25 It's to look at that. They give all

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1 reference ranges for different tests.

2 Okay?

3 MR. DREW: So, where's the results?

4 DR. MUJTABA: Your result was 31,  
5 which is higher than 15 to pass the MS  
6 confirmatory test. That's why they  
7 reported it positive.

8 MR. DREW: But they're saying "the  
9 initial test," they have to give me the  
10 initial test first.

11 DR. MUJTABA: Sir, if they get the  
12 initial test, they do the confirmation  
13 test, which is 15. If it's more  
14 than 15, they report as positive, that's  
15 all; that's the lab.

16 MR. DREW: So, there's no need to do  
17 a confirmation test if I don't trigger  
18 anything on the initial test?

19 DR. MUJTABA: For that, you have to  
20 contact the lab yourself. I just know  
21 about the regulation.

22 If you have a question for the lab,  
23 then you should call the lab person and  
24 ask them. Okay?

25 MR. DREW: Could you present the

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1 regulation?

2 DR. MUJTABA: My purview is the  
3 regulations.

4 MR. DREW: Can you present the  
5 regulation?

6 DR. MUJTABA: I'm sorry?

7 MR. DREW: Can you present the  
8 regulations?

9 DR. MUJTABA: I don't have it right  
10 now with me. But you call the lab, get  
11 the information when they do the test.

12 The tests, if they're positive, if  
13 the test for the initial is positive,  
14 then they do the MS. And if it's more  
15 than 15, they report as positive.

16 MR. SANCHEZ: So, Dr. Mujtaba, is  
17 there a guideline? So, you send the  
18 sample over, right? There's got to be  
19 some guidelines that the lab follows as  
20 per the structure --

21 DR. MUJTABA: Yes.

22 MR. SANCHEZ: So, could you --

23 MR. MAGGIORE: Dr. Mujtaba, please  
24 allow Mr. Sanchez complete the question  
25 and then answer.

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1 DR. MUJTABA: Yes. I'm sorry I  
2 speak over him, yes.

3 MR. SANCHEZ: So, my question is,  
4 there must be some guidelines that the  
5 lab follows.

6 DR. MUJTABA: Right.

7 MR. SANCHEZ: So, could you present  
8 those, or could you provide those  
9 documents?

10 DR. MUJTABA: I don't have it right  
11 now. I mean, you can call the lab. But  
12 the lab have their own DOT Regulations,  
13 as far as how they report the positives,  
14 basically.

15 MR. SANCHEZ: Okay.

16 DR. MUJTABA: So, if you have a  
17 question, then you contact the lab.

18 MR. SANCHEZ: So, it's a DOT  
19 Regulation that you will use,  
20 Dr. Mujtaba?

21 DR. MUJTABA: I'm sorry?

22 MR. SANCHEZ: So, it's the DOT  
23 Regulation, New York State DOT  
24 Regulation, that they follow?

25 DR. MUJTABA: Yes; DOT Regulation,

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1 right. So, as per DOT, the information  
2 that the MS say, which is more than 50,  
3 or 50 or more, then they check for the  
4 confirmatory test, which is DCMS; if  
5 it's more than 15, they report as  
6 positive.

7 MR. SANCHEZ: Okay.

8 DR. MUJTABA: It's right there, it's  
9 right there. It's very  
10 self-explanatory. If you look at the  
11 columns right here, they give you all  
12 the control points.

13 MR. DREW: I have one more question  
14 for you. Exhibit 15, --

15 MR. MAGGIORE: Hold on. I need to  
16 provide that to Dr. Mujtaba. 15?

17 MR. DREW: Yes.

18 MR. MAGGIORE: One moment.

19 MR. SANCHEZ: This (indicating)?

20 MR. DREW: Yes. I just --

21 MR. MAGGIORE: Can I see it?

22 MR. SANCHEZ: (Handing.)

23 MR. DREW: -- wanted to know,  
24 where's the test results? Where's the  
25 actual -- all this is a form that

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1 somebody was just putting in checks  
2 saying, "This is what you failed for."

3 Where's the numbers to confirm the  
4 original conclusion, how they came to  
5 the conclusion? It's just somebody  
6 putting --

7 MR. SANCHEZ: It can't be.

8 MR. DREW: Because he gave me a  
9 problem, remember, when I was trying to  
10 get this test result. He was saying  
11 that he didn't have the access to that.  
12 So, we stayed off. (Inaudible.)

13 Because he was saying the MTA don't  
14 have it, he don't have it. Then, that's  
15 when Chris (inaudible). They should  
16 have that.

17 MR. SANCHEZ: Well, you can do your  
18 own examination, and we'll just use this  
19 (indicating). (Inaudible), you know?

20 MR. MAGGIORE: Dr. Mujtaba, I just  
21 e-mailed you Carrier Exhibit 15. I also  
22 sent 16, since they are companion  
23 documents.

24 Just let me know when you receive  
25 them, then we will continue.

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1 DR. MUJTABA: Yes, okay. Yes, go  
2 ahead.

3 MR. MAGGIORE: Okay. Mr. Drew, you  
4 have a question for Dr. Mujtaba?

5 MR. DREW: Yes. My question was,  
6 when I requested the second -- the split  
7 specimen test, the test results, you  
8 told me you didn't have it. You said it  
9 was the MTA.

10 When I even asked for the initial  
11 test results, you said you didn't have  
12 that, the MTA possesses that.

13 But then, I spoke to Mr. Yodice, and  
14 he informed me on how you are the  
15 individual that should have it and you  
16 are in charge of that.

17 And when he contacted you, that is  
18 when you finally sent me the first,  
19 Exhibit 13, the test result, the initial  
20 test result.

21 My question is, with this  
22 Exhibit 15, I wanted the test results  
23 with the actual numbers. This is just a  
24 form with somebody checking a box and  
25 signing their signature, but it doesn't



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1 give you a full breakdown of the test  
2 result.

3 DR. MUJTABA: Again, as per DOT, for  
4 reconfirmation, they are not obliged to  
5 check for the quantity. They only check  
6 for the presence of the metabolites.  
7 Okay?

8 MR. DREW: As per DOT?

9 DR. MUJTABA: Yes. You can check  
10 with the labs, they follow DOT  
11 Regulations.

12 MR. SANCHEZ: And, Dr. Mujtaba, that  
13 would be Quest Diagnostic; is this the  
14 same lab that the Carrier always uses?

15 DR. MUJTABA: Around this time,  
16 there was a different lab. If you look  
17 at the number, I think it's LabCorp., I  
18 think.

19 Look at the name of the lab, on top  
20 somewhere.

21 MR. SANCHEZ: I'm looking at  
22 Carrier 13, it says, "Donor, Specimen  
23 ID, Client --"

24 Where would I find the lab  
25 information?

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1 MR. MAGGIORE: It says at the  
2 upper, --

3 DR. MUJTABA: It's up at the top,  
4 the left-hand corner.

5 MR. MAGGIORE: -- right-hand corner.

6 MR. SANCHEZ: I know, but it's --

7 MR. MAGGIORE: Quest Diagnostics.

8 MR. DREW: That's Quest Diagnostics,  
9 but the --

10 MR. SANCHEZ: Well, which Quest  
11 Diagnostics? I mean, that's the name --

12 DR. MUJTABA: The initial was done  
13 by Quest, and the confirmation was --  
14 re-confirmation was done by -- the  
15 second test was done by LabCorp.

16 MR. SANCHEZ: So, can we get the  
17 contact information for Quest  
18 Diagnostic? That's my question.

19 DR. MUJTABA: It should be on the  
20 lab report. Do you see any numbers  
21 there?

22 MR. MAGGIORE: Just to clarify for  
23 the record, it's at the bottom,  
24 400 Egypt Road, Norristown,  
25 Pennsylvania. That's Quest Diagnostic.

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1 MR. SANCHEZ: Okay.

2 MR. MAGGIORE: And if there's a  
3 question regarding LabCorp., it's on  
4 Exhibit 16, upper, right-hand corner,  
5 69 First Avenue, Raritan, New Jersey.

6 MR. SANCHEZ: Okay. Do you have any  
7 other questions?

8 MR. DREW: No.

9 MR. SANCHEZ: We have no further  
10 questions.

11 DR. MUJTABA: Okay, thank you.

12 MR. SANCHEZ: Thank you.

13 MR. MAGGIORE: Okay. Dr. Mujtaba?

14 DR. MUJTABA: Yes?

15 MR. MAGGIORE: You are excused.

16 The time is 11:54 a.m., and we are  
17 going to take a brief recess and go off  
18 record.

19 Thank you for your participation.

20 DR. MUJTABA: Thank you. Thank you.

21 (Whereupon, a short recess was  
22 taken.)

23 MR. MAGGIORE: We are back on the  
24 record. The time is approximately  
25 11:55 a.m.

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1           The Organization has additional  
2 witnesses it would like to call.  
3 However, they are not present at this  
4 time and they have requested a recess.

5           I am granting their request for a  
6 recess to allow their witnesses to  
7 appear.

8           I will reach out to Mr. Sanchez for  
9 a date where everyone is available, and  
10 we will continue the trial on that date.

11           So, at this time, we are going to  
12 conclude this day of the Hearing, and we  
13 are off the record.

14           (Whereupon, at 11:56 A.M., the above  
15 matter concluded.)

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E X H I B I T S

CARRIER EXHIBIT	EXHIBIT DESCRIPTION	PAGE
EXHIBIT NUMBER		
20	Trial Continuation Notice dated 02/15/2023	5
20A	United States Postal Service Tracking History Certified Mail Number 70220410000344311637	6

ORGANIZATION EXHIBIT	EXHIBIT DESCRIPTION	PAGE
EXHIBIT NUMBER		
6	List of Employees (22 pages)	23

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C E R T I F I C A T E

STATE OF NEW YORK            )  
  :  SS.:  
COUNTY OF NASSAU            )

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

That the above is a correct  
transcription of my stenographic notes.

I further certify that I am not related  
to any of the parties to this action by blood or  
by 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 8th day of March 2023.

*Danielle Rivera*

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DANIELLE RIVERA