

PUBLIC LAW BOARD 6394

AWARD NO. 47

Parties to Dispute:

BROTHERHOOD OF MAINTENCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:"Claim of the System Committee of the Brotherhood that

1. The dismissal of Welder H. Hagwood by letter dated August 6, 2009 in connection with failure to protect his assignment on Tuesday, June 30, 2009; improper performance of duty on Wednesday, July 1, 2009; and conduct unbecoming an employee on Thursday July 2, 2009 is without just and cause and excessive and undue punishment (Carrier's File MW-DEAR-09-61-LN326).
2. As a consequence of the violation(s) referenced in Part I above, Claimant Hagwood shall now be placed back in service immediately compensated all straight time and overtime hours for which he has been deprived, which shall include July 3, 2009, and continuing until he is reinstated to service. Mr. Hagwood should also be granted all benefits and credits for the days that the Carrier has him held out of service. He should be exonerated of all charges and that the proceedings of this investigation and the discipline of "dismissed from all service" be removed from his personal record."

Upon the whole record and all the evidence, after hearing, the Board finds the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as precedent in any other case.

AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

On June 30, 2009 the Claimant was absent from his Electric Welder position without informing the proper supervisory personnel or other personnel. On June 29, 2009 he had been on an approved one-day vacation but he did not return to work as scheduled

on June 30, 2009 and did not contact his supervisor about the unapproved absence. On July 1, 2009 he received counseling from his supervisor on the importance of reporting to work. During this talk with the supervisor the Claimant requested a day off on July 3, but that request was declined. Later on July 1, 2009, the Claimant did not complete repairs to CP216 after having received instructions from his supervisor to do so. On the morning of July 2, 2009, two supervisors heard the Claimant say that "people better watch out what they say to me or I will take them across the street" and that the Claimant said he might "snap" or words to that effect. The Claimant testified that on July 2, 2009 what he said to the supervisor in a very indirect way was that people should lay off criticizing him or go across the street and do it privately. He testified that he said words to this effect: "Let's talk it over on the other side of the street." The Claimant also said it was not intended as a threat. There is some dispute over whether he was angry at the time he said this to the supervisor.

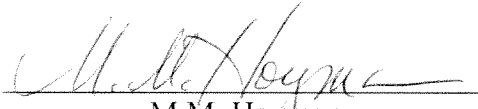
The statement he made was the basis of disciplinary action for conduct unbecoming an employee, along with the two other charges: one for failure to cover work on June 30 and the failure to complete the welding on CP216 on the following day. An investigation was held on July 21, 2009 and after that the Claimant was dismissed from service. At the hearing, the union had numerous objections to the investigation based on claims that it was unfair, involved leading questions, and that the charges were not specific enough.

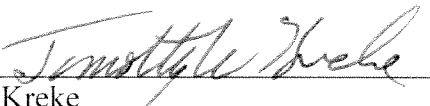
The Claimant disputed the charges by saying that he had never intended to leave the job unfinished (Transcript, Page 38). He intended to return to work the next day, although he did say that he possibly should not have left CP216 in the state that he did. The Claimant testified that he realized he would have to return to working on the project the next day (Transcript, Page 43). The record indicates he had completed it up to FRA standards, but not up to the standards of a job well done (Transcript, Page 27). There was much testimony in the record about the quality of the Claimant's work as a welder. The gist of this is the following: the Claimant's supervisor is not trained on projects like CP216. The Claimant does not react well to feedback about suggestions on how to weld better. He thinks that the supervisors are unfairly obsessed with watching his work. A supervisor who is trained on projects like CP216, Mr. Owen, corroborated that there had been work performance issues on welding projects with the Claimant although Mr. Owen did not see the welding job in question.


The Claimant is a four-year employee and this is his first investigation for any issue. The circumstances of the case are clear: the Claimant needs to adjust his outlook and bring a more positive attitude toward both fellow employees and supervisors. Although not every supervisor and employee will get along well, the Claimant needs to learn how to respect supervision and listen to constructive criticism on quality and try to improve his work products. Disagreements with supervisors and other employees will occur, but the Claimant should learn to channel those disagreements into constructive conversations and not angry outbursts.

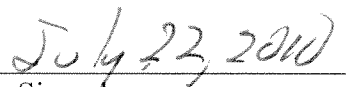
Considering all the evidence, the Board finds that the employer has met its burden of proof. The Claimant was guilty as charged and should have been subject to disciplinary action. However, the Board finds that a discharge penalty is too severe. The Board concurs with the Organization that there must be a chance for rehabilitation consistent with the progressive discipline, and this did not happen in the instant case. The Claimant shall be reinstated to service with seniority unimpaired but without compensation for time held out of service. For a period of twelve months commencing with the date Claimant is reinstated, he shall be disqualified from any welder position. Following the twelve month disqualification period, the Claimant shall be eligible to bid on welder positions.

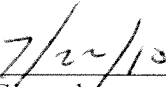
The claim is sustained in accordance with the findings. The Carrier is directed to make this effective within 30 days following the date that the parties affix their signatures thereto.


M.M. Hoyman
Chairperson and Neutral Member


T. Kreke
Employee Member


D.L. Kerby
Carrier Member


Date Signed


Date Signed

Issued at Chicago, Illinois on June 19, 2010