

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
DIVISION – IBT RAIL CONFERENCE	)	Case No. 111
	)	
and	)	
	)	Award No. 111
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER	)	
NORFOLK & WESTERN RAILWAY COMPANY)	)	

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Richard K. Hanft, Chairman and Neutral Member  
Scott M. Goodspeed, Carrier Member  
Zachary J. Wood, Organization Member

STATEMENT OF THE CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. W. Helsel, issued by letter dated October 28, 2019, in connection with his alleged failure to protect his assignment on Burns Harbor Maintenance Gang No. 1 in that, despite being previously counseled, Mr. Helsel absented himself from duty without properly notifying and/or receiving authorization from the proper authority on September 30, 2019 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier’s File MW-DEAR-19-79-LM-726 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant W. Helsel has been severely disciplined and unfairly dismissed and must now be returned to service, compensated for all lost time and restored with all rights and benefits.”

FINDINGS:

Upon the whole record and all of the evidence, after hearing, the Board finds that 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 a precedent in any other case.

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

On September 30, 2019 Claimant in this matter was working a schedule of Monday through Friday from 6:30 A.M. to 2:30 P.M. On that date, he was performing his trackman duties replacing crossing rubbers at Amery Road, just east of CP453. Upon completion of that task in the afternoon, his supervisor instructed him and a co-worker to report back to CP482 where the rest of the gang was working and continue working with the gang there.

There is no accusation that Claimant did not report to CP 482 but after arriving there and upon the expiration of his normal shift, Claimant asked his co-worker to take him back to his car at the yard so he could leave Carrier's property for the day. The record provides that Claimant's supervisor testified at the formal investigation into these charges that he never instructed the Claimant that there was mandatory overtime. The supervisor asserts, however, that Claimant should have called him to inform him that he was leaving at the end of his assigned shift.

The Carrier asserts that Claimant's guilt in this matter was conclusively proven by his admission at the formal investigation held on October 17, 2018 that he did not notify supervision that he was leaving for the day nor did he at any time provide any legitimate explanation or justification for his unauthorized absence or his failure to follow instructions.

Mitigating factors considered by the Board in this matter are that it is undisputed that Claimant notified his supervisor earlier that he would need to observe time off because of a death in his family. At the end of Claimant's regularly scheduled shift he left work to attend to personal matters and make funeral arrangements.

The Organization maintains that Claimant in this matter was denied a fair and impartial investigation in this matter because Carrier failed to provide a precise charge as required by agreement or provide requested information prior to the disciplinary investigation.

Moreover, the Organization insists that Carrier failed to meet its burden of proof because in this instance it is undisputed that Claimant's assigned work schedule is 6:30 A.M to 2:30 P.M. and Claimant worked his entire work schedule before relieving himself at the end of his assigned tour of duty.

The Board has reviewed the record in this matter and initially find the Organization's procedural due process complaints to be without merit.


With regard to the merits of the case, it was undisputed that Claimant left work after being assigned to join the gang at CP482 and left work without notifying his supervisor before joining the gang at CP482. The charges were proven.

The Board upon consideration of the penalty assessed in this matter, dismissal, finds that although the charges were proven by substantial evidence the penalty assessed especially considering the mitigating circumstances here involved to be excessive.

In view of the violations, the Board orders the Carrier to reduce the discipline to a forty-day actual suspension with compensation and commensurate Service Credit restored for all time out of service beyond the forty-five-day suspension.

Award:

Claim sustained in part and denied in part consistent with the above findings. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



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Richard K. Hanft, Chairman



Scott M. Goodspeed, Carrier Member

Dated at Chicago, Illinois, October 20, 2022



Zachary J. Wood, Employe Member