

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 114
)	
and)	
)	Award No. 114
NORFOLK SOUTHEN RAILWAY COMPANY (FORMER)	
NORFOLK & WESTERN RAILWAY COMPANY))	

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

STATEMENT OF THE CLAIM

1. The Carrier’s discipline (dismissal) of Mr. K. Frazier, Jr., issued by letter dated October 8, 2019, in connection with his alleged improper performance of duty, on June 6, 2019, while operating his assigned material handling truck (214502), when he allegedly entered the foul of Main Track 1 near Pritchard, West Virginia, without any track protection and, as a result, the material handling truck was struck by an eastbound train that was proceeding on Main Track 1 was capricious, excessive, harsh and unwarranted (Carrier’s File MW-BLUE-19-61-LM-457 NWR).
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall immediately reinstate Claimant K. Frazier, Jr. and he shall be cleared of the unsubstantial charges, with all rights and back pay.”

FINDINGS:

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employe 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:

Claimant in this matter, at the time of the incident giving rise to this dispute had twenty-three (23) years’ unblemished service with the Carrier. On June 6, 2019 it is undisputed Claimant was working as a Material Handling truck driver. As Claimant entered a grade crossing and attempted to set the truck he was operating onto Main Track 2, the truck was struck by an

East-bound train traveling on Main Track 1. Claimant was charged with improper performance of duty and a formal investigation took place on September 19, 2019. After review of the record,

Carrier determined to dismiss the Claimant and communicated that decision to Claimant by letter dated October 8, 2019.

A Claim was filed on the Claimant's behalf and after being progressed on the property in the usual manner, up to and including discussion in conference, the claim remains declined, and this dispute is now properly before this Board for final adjudication.

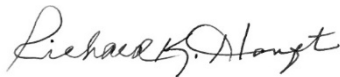
The Organization advanced complaints relative to the Claimant's procedural due process rights being violated in the handling of this case that the Board finds are without merit.

Moreover, it is clear from the evidence on the record that Claimant had to be fouling Track Main 1 without proper protection for the accident to have occurred.

With regard to the discipline assessed in this matter, the Board finds that dismissal, given the Claimant's Career Service Record of twenty-three (23) years of unblemished service is excessive. Claimant is to be returned to service without compensation for time out of service.

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.



Richard K. Hanft, Chairman



Scott M. Goodspeed, Carrier Member



Zachary J. Wood, Employee Member

Dated at Chicago, Illinois, October 20, 2022