

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 113
)	
and)	
)	Award No. 113
NORFOLK SOUTHERN 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: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. A. Woody, issued by letter dated March 30, 2020 in connection with his alleged improper performance of duty on February 11, 2020, when he allegedly fouled Main 2 at Mile Post CD 273.51 while changing out a broken rail on Main 1, allegedly without proper track protection was capricious, excessive, harsh and unwarranted (Carrier’s File MW-DEAR-20-17-LM-136 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Woody shall be returned to service and made whole for all hours lost including all credits and benefits due in his absence.”

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 February 11, 2020 Claimant in this matter was working as a Trackman headquartered in Sandusky, Ohio. Claimant was charged with conduct on that date that constituted improper performance of duty when, the Carrier alleged, Claimant fouled a live track without proper track protection. On Line No. 293 of the transcript of the formal investigation Claimant admitted to such conduct when he was asked: “It is accurate that you were fouling the adjacent track which you did not have protection on?” And he answered “Yes.”

A formal investigation into this matter was held on March 11, 2020. The Claimant’s guilt was conclusively established not only by Claimant’s admission, but further by the corroborating

testimony by the Supervisor of track inspection, the Foreman and Roadway Worker in Charge and a vehicle Operator working in that gang.

The Organization raised objections to the Carrier's failure to comply with the procedural safeguards of Rule 30 of the parties' Agreement. The Board has reviewed each of the Organization's complaints and find them to be without merit in this particular case.

Moreover, given the Claimant's admission on the record to the violation he was charged with as well as the corroborating statements from eyewitnesses, the Carrier has met its burden of proof.

Upon review of the record in this matter as well as the Claimant's Career Service Record, the Board finds that although the Carrier has met its burden of proof, the discipline assessed in this matter was excessive. The Board directs the Carrier to rescind Claimant's dismissal and commute the discipline to a suspension of Sixty (60) days. Claimant shall be compensated for time out of service with commensurate Service Credit restored for the period of time held out of service beyond the Sixty (60)-day suspension.

Award:

Claim sustained in part and denied in part consistent with the 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