

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
DIVISION – IBT RAIL CONFERENCE	)	Case No. 115
	)	
and	)	
	)	Award No. 115
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. J. Kenney, issued by letter dated February 19, 2020, in connection with his alleged improper performance of duty in that while operating a company truck (714639) on January 8, 2020, he allegedly failed to ensure that the hand rail of the tool house was clear of the vehicle prior to making a turn, resulting in the front driver side of the truck striking the rail and allegedly resulted in damage to the door and the rail, was capricious, excessive, harsh and unwarranted (Carrier’s File MW-HARR-20-01-LM-022 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Kenney shall now be reinstated immediately with full back pay.”

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 January 8, 2020 Claimant was on duty serving as an assistant foreman at the Enola Yard. He and other members of his crew were assigned to clean out a shipping container box.

Shortly before 2:00 PM Claimant put two de-rails in the back of his truck and drove to the tool house to drop off the de-rails and retrieve a pick. According to Claimant’s testimony, he unloaded the de-rails, procured a pick, put it into the back of his assigned truck, got into the truck and proceeded to drive away. Claimant related that as he put the truck in drive and began to travel at one to two miles per hour, he heard the truck scraping against a handrail on the passenger side of the truck. He testified that he stopped, backed up, got out and walked around the truck and observed that he scraped a handrail with the front fender of the truck.

Claimant testified the handrail was in a blind spot and he hadn't seen it. Claimant immediately reported the incident to his supervisor. The Supervisor took him to a drug testing facility where he was tested for drugs and/or alcohol. Claimant then made a written statement and was taken out of service.

On February 5, 2020, a formal investigation was held to determine the Claimant's responsibility, if any, in connection with his alleged improper performance of duty in connection with this minor accident. By letter dated February 19, 2020 Claimant was advised that as a result of the accident, he was dismissed.

The Board has reviewed the record in this matter and we find that the penalty of dismissal given the particular facts and circumstances involved in this matter was excessive and that in view of the Claimant's Career Service Record that a fifteen-day suspension is sufficient to impress on the Claimant the need to be more careful when operating a Carrier vehicle.

Award:

The Claim is sustained in part and denied in part. 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