

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 117
)	
and)	
)	Award No. 117
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 [thirty-five (35) day actual suspension] of Mr. H. England, Jr., issued by letter dated June 1, 2020, in connection with his alleged failure to protect his trackman assignment on the Marion Section Gang, in that, he was allegedly absent from his assignment without notifying, or receiving authorization from the proper authority beginning on Monday, April 20, 2020 was capricious, excessive, harsh and unwarranted (Carrier's File MW-BLUE-20-54-LM-388 NWR).
2. The appeal as appealed by Vice Chairman J. Long, by letter dated June 11, 2020, to Carrier Officer S. Goodspeed shall be allowed as presented because said appeal was not disallowed by Mr. Goodspeed in accordance with the System Discipline Rule and Rule 31.
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, Claimant H. England, Jr. shall now '*** be reinstated with all back pay, rights, and privileges as well as all charges be expunged from his record.' (Employes' Exhibit 'A-2')

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:

Claimant in this matter was a Trackman working on the Marion Section Gang and had sixteen (16) years' seniority. Claimant, by his own admission at the formal investigation absented himself from service from Monday, April 20, 2020 through and including Friday, April 25 2020 and failed to notify his supervisor or anyone else prior to his absence beginning April 20.

Carrier conducted a formal investigation on May 13, 2020 with Claimant and the Organization in attendance and, by letter dated June 1, 2020 Claimant was notified that as a result of his proven failure to protect his assignment he was being assessed a thirty-five (35) day actual suspension.

By letter dated June 11, 2020 the Organization progressed an appeal of the discipline assessed to the Carrier's Highest Designated Officer, the receipt of which was acknowledged.

On October 5, 2020 the Organization notified the Carrier that it failed to timely respond to its June 11, 2020 appeal and accordingly, the appeal must be allowed as presented.

The System Discipline Rule provides that claims not disallowed within thirty (30) days of being filed shall be allowed.

On October 5, 2020 Vice Chairman Long wrote to Carrier's Highest Designated Officer informing him that the Claim that was filed on June 11, 2020 had not been disallowed as and as a result of the violation of the expressed time limit that the claim must be allowed as presented.

The Board, after review of the correspondence between the parties on the property agrees Carrier failed to timely disallow the claim in this matter and that by rule the claim must be allowed as presented.

Claimant shall be made whole consistent with the Statement of the Claim above.

Award:

Claim sustained. 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, Employe Member

Dated at Chicago, Illinois, October 20, 2022.