

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 118
)	
and)	
)	Award No. 118
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 STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. H. England, Jr., issued by letter dated June 18, 2020, in connection with his alleged conduct unbecoming an employee in that on May 8, 2020, Carrier supervision became aware that he was charged with various felonies to include: wanton endangerment involving a firearm, child abuse creating risk of injury, strangulation, domestic violence and brandishing a deadly weapon by the Magistrate Court of Mercer County, West Virginia on April 17, 2020 was arbitrary, excessive and unwarranted (Carrier’s File MW-BLUE-20-66-LM-454 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant H. England, Jr. shall be immediately reinstated with all back pay, rights and privileges and that all charges be expunged from his record. Additionally, any time lost by the Claimant shall be credited to his service months for retirement and vacation purposes.”

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, at the time that this dispute arose was a Trackman with sixteen years’ service and an unremarkable Career Service Record. By letter dated May 18, 2020 Carrier directed Claimant to report for a formal investigation concerning being charged with Conduct Unbecoming an Employee relying on Safety General Conduct Rule 900 – Employee Misconduct as the basis for its charges.

On May 8, 2020 Carrier supervision became aware that Claimant was charged with various felonies for off-duty misconduct. The Carrier contends that based on the preponderance of evidence adduced at the investigation that the Claimant was found guilty of the charge and was dismissed from service.

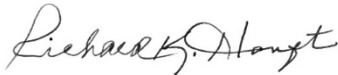
Although it is clear to this Board that the Claimant had engaged in certain conduct that would justify Carrier in removing him from service, none of the felonies for which the Claimant was charged with ultimately resulted in a conviction.

Nevertheless, there was substantial evidence on this record that establishes that the conduct occurred and constituted conduct unbecoming under the Carrier's rule.

Under these particular circumstances the Board shall reinstate Claimant without compensation for time out of service.

Award:

Claim 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