

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 121
)	
and)	
)	Award No. 121
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: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Phelps, issued by letter dated November 25, 2020, in connection with his alleged conduct unbecoming an employee in that you made inappropriate, discourteous and unprofessional comments to Director of Labor Relations Scott Goodspeed and Norfolk Southern Chief Medical Officer Dr. Francesca Litow in two (2) separate voicemail messages that he left on Director Goodspeed’s Company cell phone at 9:26 a.m. and 9:31 a.m. on August 10, 2020 was capricious, excessive, harsh and unwarranted (Carrier’s File MW-DEAR-20-85-LM-705 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Phelps shall now be restored to active duty, restoring all lost wages and benefits, have his record expunged of this matter and otherwise be made whole.”

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 had previously been a CDL truck driver for the Carrier but was on medical leave and trying to get back to work after being cleared by his doctors. He had about fifteen years’ service with the Carrier at the time of the incident giving rise to this dispute.

It is undisputed that on August 10, 2020 Claimant, being frustrated, left voice mails at 9:26 AM and 9:31 AM with the Director of Labor Relations. The record contains a transcript of the messages left and suffice to say, they were inappropriate, discourteous and unprofessional.

Moreover, at the formal investigation held on the property on November 11, 2020, Claimant admitted to and apologized for leaving the voice messages.

After the formal investigation concluded, on November 23, 2020 Claimant was notified by letter that he was dismissed for violation of Safety and General Conduct Rule 900: Employee Conduct. The Organization filed an Appeal on Claimant's behalf on December 10, 2020 and the matter was progressed in the usual manner on the property up to and including discussion in conference. The Claim remains denied and is properly before this board for final adjudication.

The Organization opines that Claimant in this matter was deprived of his procedural safeguards outlined in Rule 30 of the Agreement because he was held out of service because the nature of the charges leveled against Claimant did not rise to the level of seriousness contemplated in the Parties' Agreement.

Further, the Organization contends, the Carrier failed to provide a precise charge against Claimant as required by Rule 30(a) of the Agreement.

The Organization additionally argues that the Carrier failed to meet its burden of proof because it failed to take into account the mitigating factor of Claimant's frustration due to being unable to get a clear answer as to why he was not being cleared to return to service.

Finally, the Organization asserts that the discipline assessed, dismissal, was arbitrary, unwarranted, excessive and inappropriate.

The Board has reviewed the record and all of the parties' arguments concerning this case.


The Board finds that the Organization's contentions that Claimant was deprived of his procedural due process rights to be without merit.

In regard to the Carrier's burden of proof, Claimant admitted to the conduct that he was charged with on this record.

Notwithstanding the above, the Board finds here that given the particular facts and circumstances of this case, dismissal was an excessive discipline and the Carrier is ordered to 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