

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 122
)	
and)	
)	Award No. 122
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. T. Moore, in connection with his alleged four (4) counts of conduct unbecoming an employee at Mile Post CD 217 in Lorain, Ohio on or before September 20, 2020 was capricious, excessive, harsh and unwarranted (Carrier’s File MW-DEAR-20-99-LM-835 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Moore shall be returned to service, made whole for all hours lost including all credits and benefits due in his absences.”

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 giving rise to the instant discipline was an Assistant Foreman with approximately five (5) years’ service with the Carrier. The record is clear that on the evening of September 20, 2020 Claimant was discovered on the Carrier’s property preparing to dump construction debris at the Fairlane Yard in Loraine, OH. Moreover, as a result of investigation into this matter, Claimant admitted to the Norfolk Southern Police that he had previously dumped construction debris at the Fairlane Yard. The Claimant further testified at the formal investigation into this matter held on October 14, 2020 that he planned to dump debris on September 20, 2020 and that he had previously dumped debris in the Fairlane yard.

Claimant was charged with violation of General Conduct Rule 911 (d) with the following offenses:

1. Conduct unbecoming an employee in that on September 23, 2020 he made false statements to Norfolk Southern Police Department Special Agents concerning his presence on Carrier property with your personal vehicle and trailer loaded with construction trash and other personal debris near MP 217 Loraine, OH.

2. Conduct unbecoming an employee in that on September 20, 2020, he was trespassing on Norfolk Southern property near MP CD 217 in Loraine, Ohio, not engaged in the performance of railroad duties and without Supervision permission or knowledge.
3. Conduct unbecoming an employee in that on September 20, 2020 he intended to dump construction materials and other personal debris on Norfolk Southern owned property in violation of Safety and General Conduct Rule 911(d) near MP CD 217 in Lorain, OH.
4. Conduct unbecoming an employee in that on September 20, 2020 he admitted to Norfolk Southern Police Department Special Agents he had previously dumped construction materials and other personal debris on Norfolk Southern owned property in violation of Safety and General Conduct Rule 911 (d) earlier in the month of September 2020 near MP CD 217 in Lorain, Ohio.

Claimant admitted to all of the above at the formal investigation held October 14, 2020. By letter dated October 27, 2020 Claimant was dismissed from service. On November 10, 2020 the Organization, on the Claimant's behalf appealed the Claimant's assessed dismissal.

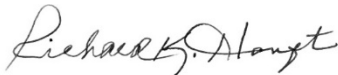
The Organization submits that the Carrier failed to comply with Rule 30 of the Parties' Agreement first, because the Carrier improperly withheld Claimant from service prior to the formal investigation. Second, because the Carrier did not offer the Claimant union representation before providing a written statement and when it failed to provide a copy of the Claimant's statement to the Organization and finally because the Carrier sent a copy of the written transcript of the investigation to the wrong Organization representative.

The Board has reviewed the Organization's allegations that the procedural safeguards of the Parties' Agreement were violated. The Board finds the procedural complaints to be without merit.

Moreover, the Organization avers, the quantum of discipline was inappropriate and improper. The Board, having thoroughly reviewed the record and the Claimant's admission to all of the charges levied against him and due to the serious nature of Claimant's conduct, the Board finds that the Carrier met its burden of proof and that the decision made on the property was appropriate and proper and can find no reason in this record to overturn the decision made on the property.

Award:

The Claim is denied.



Richard K. Hanft, Chairman



Scott M. Goodspeed, Carrier Member



Zachary J. Wood, Employee Member

Dated at Chicago, Illinois, October 20, 2022