

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
DIVISION – IBT RAIL CONFERENCE	)	Case No. 124
	)	
and	)	
	)	Award No. 124
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. Carpenter, issued by letter dated September 25, 2020, in connection with his alleged failure to protect his assignment from August 17, 2020 to August 21, 2020; failure to follow the verbal and written instructions of Track Supervisor T. Parks given during a counseling session on July 27, 2020 and confirmed by letter dated July 28, 2020; conduct unbecoming an employee when he allegedly spoke to a supervisor in an unprofessional and inappropriate manner on August 17, 2020 while assigned as a trackman in Norfolk, Virginia - Lambert’s Point was capricious, excessive, harsh and unwarranted (Carrier’s File MW-BLUE-20-115-LM-742 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Carpenter shall be immediately reinstated with all back pay, rights and privileges, have all days withheld from service count toward his qualification for vacation, holiday and retirement purposes and that all charges be expunged from his record. Additionally, the Claimant should be allowed to openly report work related accidents without retaliation.”

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 on a section gang headquartered out of Norfolk, Virginia and had approximately fifteen (15) years’ service at the time of the incident giving rise to the assessed discipline.

The record shows that early in the morning of August 17, 2020 Claimant left a message for the Track Supervisor indicating that he was requesting forty (40) hours of vacation time. When the Track Supervisor contacted the Claimant to advise him that he didn't have forty (40) hours of vacation remaining and suggested that he return to work the Claimant responded that he didn't care and he would be taking the week off regardless. The Claimant further stated that if the Track Supervisor did not approve the time off that he could have the Carrier's Vice President of Engineering contact him. Claimant did not report for work between August 17 through August 21, 2020.

Claimant was charged with failure to protect his assignment between August 17 through August 21, 2020; failure to follow the verbal and written instructions of the Track Supervisor given during a counseling session on July 27, 2020 and confirmed by letter dated July 28, 2020; and, Conduct unbecoming an employee when he spoke to a supervisor in an unprofessional and inappropriate manner on August 17, 2020.

On September 9, 2020, the Carrier conducted a formal investigation into the charges without the Claimant in attendance. By letter dated September 25, 2020 Carrier informed Claimant that as a result of the findings from the formal investigation, he was dismissed from service.

After the Organization's appeal being progressed on the property in the usual manner, up to and including discussion in conference, the claim remained declined and is now properly before this Board for final adjudication.

The Organization submits that the Carrier failed to provide Claimant a fair and impartial hearing, that Carrier failed to meet its burden of proof and that the discipline assessed was arbitrary and unwarranted.

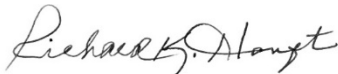
The Board has reviewed the procedural arguments raised by the Organization and the Board finds that due to the unique facts and circumstances of this case, while there was a procedural error that did occur, it was not prejudicial to this particular Claimant.

Moreover, the record demonstrates that the Carrier met its burden of proof with substantial evidence.

Given the Claimant's conduct, the Board cannot find that the penalty assessed in this matter was either arbitrary or unwarranted. The Board therefore can find no reason to disturb the disciplinary decision reached on the property.

Award:

Claim denied.



Richard K. Hanft, Chairman



Scott M. Goodspeed, Carrier Member



Zachary J. Wood, Employee Member

Dated at Chicago, Illinois, October 20, 2022