

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 127
)	
and)	
)	Award No. 127
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. D. Patchin, issued by letter dated July 24, 2020, in connection with his alleged improper performance of duty on June 17, 2020, while he allegedly attempted to park a flash butt truck at a Best Western Hotel in Hornell, New York, when he allegedly made a reverse move with the truck, without ensuring that his passenger/ground man was in a safe location in order to provide for your back up protection, resulting in the truck striking and injuring the passenger/ground man was capricious, excessive, harsh and unwarranted (Carrier’s File MW-HARR-20-65-SG-599 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Patchin shall now have all charges exonerated and be reinstated back to service effective immediately and be made fully whole for any lost wages, per diems, holiday pay, all credits for his vacation and all other benefits.”

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 a relatively short tenure of less than three (3) years at the time of the incident giving rise to this matter and was assigned as a Class 1 Machine Operator and working as a Flash Butt Welding Truck Operator.

It is undisputed that on June 17, 2020 after completing their assignment for the day, Claimant and his passenger and co-worker returned to their lodging in Hornell, New York. After entering the hotel’s parking lot, Claimant, driving the Flash Butt truck began maneuvering the

vehicle, as they had done on numerous occasions prior to pull into a parking space. The evidence shows that Claimant had the truck in “drive” and came to a stop. Claimant’s passenger exited the truck when it came to a stop to assist as a groundman while backing the truck into a parking spot. Before the groundman could position himself in a safe spot to signal to the driver in the reverse move, Claimant put the truck into “reverse” and started backing up. Not seeing the ground man, Claimant backed over him. The groundman incurred substantial injury.

Claimant was taken out of service at that time and summoned to a formal investigation commencing on July 14, 2020. As a result of the finding of the formal investigation, Claimant was notified that he was dismissed by letter dated July 24, 2020. The dismissal was timely appealed by the Organization by letter dated August 13, 2020. After being progressed in the usual manner on the property, up to and including discussion in conference, the claim remains declined and is now properly before the Board for final adjudication.

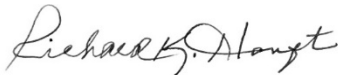
The Board has reviewed the procedural complaints made by the Organization and find them to be without merit.

The Board, after thorough review of the record, finds that the evidence including Claimant’s own admission to the relevant facts dictates that the Carrier met its burden of proof and proved the rules violations by substantial evidence.

Given the particular facts on this record, the Board cannot find that the discipline assessed was arbitrary, excessive, unwarranted or inappropriate.

Award:

Claim denied.



Richard K. Hanft, Chairman



Scott M. Goodspeed, Carrier Member



Zachary J. Wood, Employee Member

Dated at Chicago, Illinois, October 20, 2022