

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 128
)	
and)	
)	Award No. 128
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. E. Pardo, issued by letter dated November 11, 2020, in connection with his alleged conduct unbecoming a Norfolk Southern employee and for alleged improper performance of duty on September 16, 2020 near SR 272.9 while assigned as a ballast regulator operator was capricious, excessive, harsh and unwarranted (Carrier’s File MW-HARR-20-90-LM-823 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant E. Pardo shall now be reinstated to service with the Carrier with his seniority rights intact and his benefits unimpaired.”

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 fifteen years’ service with the Carrier at the time that the incident giving rise to this dispute took place on September 16, 2020. Claimant was working as a Machine Operator headquartered out of Elmar, New York when the ballast regulator Claimant was operating was involved in a collision. Claimant, the evidence shows, placed the ballast regulator in neutral gear, failed to set the brakes on the machine and disembarked the machine to throw a switch.

After Claimant disembarked from the machine and was walking toward the switch, the machine drifted into the switch machine causing substantial damage. Claimant was removed from service and charged with improper performance of duty.

A formal investigation convened on the property on October 27, 2020 and as result of the findings of the investigation, Claimant was dismissed by letter dated November 11, 2020.

A claim was filed on Claimant's behalf on February 28, 2021. The claim was progressed in the usual manner on Carrier's property up to and including discussion in conference and now is properly before the Board for final adjudication.

The Board, after thorough and careful review of the record in this matter finds that the Carrier met its burden of proof including the Claimant's admission of responsibility for the collision.

The Board, upon review of this record as well as Claimant's Career Service History determines that the discipline of dismissal, given the particular facts and circumstances on this record, was excessive and directs the Carrier to reinstate the 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