

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 130
)	
and)	
)	Award No. 130
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. A. Buckland, issued by letter dated May 14, 2021, in connection with his alleged improper performance of duty when he improperly fouled the track before the track was made inaccessible on March 17, 2021 in the vicinity of Moorman Yard in Bellevue, Ohio at Mile Post B245.7 was capricious, excessive, harsh and unwarranted (Carrier’s File MW-DEAR-21-26-BB-216 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Buckland shall be restored with all rights, privileges and back pay.”

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 employed as a First-Rate Carpenter for the B & B and assigned to make bridge repairs at MP B244.45 on March 17, 2001. He was charged by the Carrier with improperly fouling the track before the track was made inaccessible and failure to wear proper PPE.

On March 17, 2021 Claimant and his work partner were using a man-lift to access an elevated area where they were building forms to make concrete repairs. They received their first YP at 10:12 AM and was cleared at 10:48 AM.

A second YP was obtained at 2:05 PM. The track protection required was two derails applied on the south side of the bridge and a switch thrown on the north side of the bridge.

Claimant and his work partner drove the man-lift onto the tracks and fouled it before the derails were secured. An FRA inspector drove by the worksite as this was taking place, stopped, did a quick investigation and wrote the work crew up for an FRA RWP violation.

Claimant was taken out of service and summoned to a formal investigation that was held on April 27, 2021. By letter dated May 14, 2021 Claimant was notified that as a result of the findings of the formal investigation, he was being dismissed from service. On May 27, 2001, the Organization filed a claim on the Claimant's behalf. After being progressed on the property in the usual manner, including discussion in conference, the claim remains declined and is now properly before the Board for final adjudication.

The Board has reviewed the record in this matter and after being presented the Organization's procedural objections, find them to be without merit.

Moreover, the Board finds the evidence in this matter to substantially prove Claimant's responsibility in this matter.

In view of Claimant's Career Service Record, the Board finds that, given the particular facts and circumstances brought forth in this matter that dismissal was the appropriate discipline.

Award:

Claim denied.



Richard K. Hanft, Chairman



Scott M. Goodspeed, Carrier Member



Zachary J. Wood, Employee Member

Dated at Chicago, Illinois, October 20, 2022