

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 132
)	
and)	
)	Award No. 132
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
NORFOLK & WESTERN RAILWAY COMPANY))	

Richard K. Hanft, Chairman and Neutral Member
Scott M. Goodspeed, Carrier Member
Adam N. Gilmour, Organization Member

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. T. Gregorius, issued by letter dated May 7, 2021, in connection with his alleged conduct unbecoming an employe when he knowingly allowed Thermite 302 NWR. Duell to submit false thermite weld reports to his supervisor on numerous occasions beginning on January 11 through April 1, 2021 for at least twenty (20) locations between Binghamton and Buffalo, New York resulting in false information being input into multiple Carrier Federally mandated reporting systems while assigned as a thermite welder helper and when the Claimant allegedly knowingly modified the driver and passenger seats to fully recline when they were not manufactured to do so in Thermite Welding Truck 714656 (Carrier’s File MW-HARR-21-57-SG-302 NWR).
2. As a consequence of the violations referred to in Part 1 above, Claimant T. Gregorius shall now be exonerated of all charges filed against him, that he be reinstated back to service effective immediately, that he be fully made whole for any lost wages, per diems, holiday pay, all credits for his vacation and all other benefits under our Collective Bargaining Agreement.”

FINDINGS:

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employe 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 began his career with the Carrier on July 8, 2018 and at the time giving rise to this discipline, spanning from January through April 2021, was a thermite welder helper on Gang 67 assigned to perform work between Birmingham and Buffalo, New York.

The record reveals that the Track Supervisor for that area while making weekly patrols noticed inconsistencies in the nightly welding reports that were turned in and what was actually seen by the Track Supervisor. The Track Supervisor reported the observed inconsistencies to the Welding Supervisor, Keystone East, who physically walked the territory and inspected the locations where welds were reportedly performed. The Welding Supervisor who inspected the track checked on all welds reported going back to the first week of January, 2021.

The Welding Supervisor testified at the investigation on the property that his investigation of the reported welds found twenty-three (23) welds that were reported completed and that were not performed. The welding Supervisor testified that he interviewed Claimant and the Thermite Welder on Gang 67 and that they admitted to falsifying several reports.

The Systems Manager Welding testified at the Investigation on the property that he interviewed Claimant in this matter who admitted to knowing of false reporting of the welds made and that Claimant had actually filed some of the false reports. The Welding Supervisor testified at the Investigation on the property that Claimant filed false reports to him on January 12, 2021 and February 4, 2021.

Moreover, Claimant admitted during the investigation on the property that he submitted two (2) false reports.

After the Claimant and the Welder on Gang 67 were interviewed and admitted to making the false reports, they were both taken out of service and the Carrier arranged for the welding truck that they had been assigned to be picked up by another gang. It was immediately recognized and reported that the seat in the welding truck had been modified. Claimant admitted at the Investigation on the property that he had removed an adjustment rod and knob, moved a limiting rod and removed a bolt that held the backrest onto the seat allowing the seat to be more fully reclined.

Norfolk Southern Operating Rules R. (a) provides:

“Unless properly authorized, Employees are prohibited from restricting or interfering with the normal intended function of any device or equipment on locomotives, cars, or any other railroad property except in case of emergency in which case report must be made to the proper Authority.”

Claimant here admitted that he modified the safety function on the truck seat to allow it to more fully recline in violation of Operating Rule R. (a).

After careful review of this record, the Board finds that Claimant's admissions on the property provides substantial evidence of his responsibility in violating Carrier's rules.

Moreover, the Board finds that Claimant was afforded all procedural due process rights inherent in Rule 30 of the Parties Agreement on the property.

Finally, given the serious nature of falsifying Federally mandated, safety-sensitive track repair data and the willful modification of Carrier's truck seats to interfere with its intended safety-related function, the Board can find no reason to disturb the discipline assessed on the property.

Award:

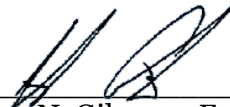
Claim denied.



Richard K. Hanft, Chairman



Scott M. Goodspeed, Carrier Member



Adam N. Gilmour, Employee Member

Dated at Chicago, Illinois, February 1, 2024