

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
DIVISION – IBT RAIL CONFERENCE	)	Case No. 141
	)	
and	)	
	)	Award No. 141
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER	)	
NORFOLK & WESTERN RAILWAY COMPANY)	)	

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Richard K. Hanft, Chairman and Neutral Member  
Adam Lively, Carrier Member  
Adam Gilmour, Organization Member

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

1. The Carrier’s discipline [five (5) day deferred suspension] of Mr. N. Howell, issued by letter dated October 20, 2020, in connection with his alleged improper performance of duty and failure to follow instructions in that on July 17, 2020, he was instructed by Supervisor Track Inspection E. Pattenau to change out two (2) defective rails and that he refused to do so was capricious, excessive, harsh and unwarranted (Carrier’s File MW-DEAR-20-79-LM-657 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant N. Howell shall now be exonerated.”

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:

This matter involves a Claimant with fifteen (15) years tenure with the Carrier, ten (10) years of which have been as a foreman. The Claimant has no other discipline on his Career Service record.

The record reflects that on July 17, 2020, Claimant was given a daily work line-up that included changing two (2) defective rails as well as replacing diamond bolts at Section Vickers and installing tie-plates at DR 56.9 on Track 2 Main.

It is undisputed that the Claimant tried to get track clearance to replace the defective rails at 10:00 a.m. and Noon on July 17, 2020, but track time was unavailable due to train traffic. The gang therefore completed the other two (2) work assignments in the morning and, since track time was denied at Noon, went to retrieve the gang’s boom truck from the repair shop and replenish propane and oxygen on the work truck that afternoon.

At around 2:45 the gang returned to the lunchroom at the Toledo, Ohio Depot and they were asked about the defective rails. The gang reported that they hadn’t gotten to the defective

rails. At 3:00 p.m. Supervisor Naudin contacted the Claimant and informed him that he was just made aware that those rails needed to be changed that day and the gang went back to work and changed the defective rails.

Claimant here was specifically charged with “improper performance of duty and failure to follow instructions in that on July 17, 2020, he was instructed by Supervisor Track Inspection E. Pattenauade to change out two (2) defective rails and that he refused to do so”.

While the Organization brought up several procedural issues in its appeal, the Board finds it unnecessary to address those issues because in this matter the Board finds that the Carrier failed to prove the charge against the Claimant by substantial evidence.

Claimant and his gang did perform the work assigned, albeit due to not being granted track time, later in the day on overtime upon the Carrier’s instruction.

Moreover, Claimant was accused here of refusing to change the defective rails and the record shows that Claimant did, in fact, change the rails and further that Supervisor Pattenauade testified that Claimant did not refuse to change the rails, and four (4) corroborating witnesses also attested in their statements that Claimant never refused to change the rails. The evidence on this record shows that the Claimant neither failed to follow instructions nor refused to change the defective rails.


Thus, the Organization’s claim must be sustained and the relief requested in Part 2 of the Organization’s Claim must be granted.

Award:

Claim Sustained. The Carrier is directed to comply with the Award on or before thirty (30) days following the Award date below.



Richard K. Hanft, Chairman



Adam Lively, Carrier Member



Adam Gilmour, Employee Member

Dated at Chicago, Illinois, December 3, 2024.